Supreme Court, U. S.
FILED
JUL 18 1974
MICHAEL RODAK, JR., CLERK

APPENDIX

Supreme Court of the United States

Term, 1973

No. 73-1256

CONNELL CONSTRUCTION COMPANY, INC.,
Petitioner,

vs.

PLUMBERS AND STEAMFITTERS LOCAL UNION NO. 100, etc.,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED FEBRUARY 14, 1974 CERTIORARI GRANTED MAY 13, 1974

SUPREME COURT OF THE UNITED STATES

October Term 1973

NO. 73-1246

Connell Construction Company, Inc., Petitioner

vs.

Plumbers and Steamfitters Local Union No. 100, etc., Respondent

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DOCKET ENTRIES

In the United States District Court for the
Northern District of Texas, Dallas Division

CONNELL CONSTRUCTION COMPANY

versus No. CA-3-4455-B

PLUMBERS & STEAMFITTERS LOCAL UNION NO. 100, OF THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTERS INDUSTRY OF THE UNITED STATES AND CANADA, AFL-CIO

DATE	PROCEEDINGS
1971	
Jan. 29	Filed PETITION FOR REMOVAL and REMOVAL BOND.
Jan. 29	Filed Pltf's MOTION TO REMAND to the State Court, for lack of jurisdiction.
Feb. 1	Filed Plf's BRIEF in support of motion to remand to State Court.
Feb. 2	Filed ORDER setting hearing on 2/12/71 at 11 A.M. on plf's motion to remand. Copy to attorneys:
Feb. 8	Filed defts NOTICE OF REMOVAL.
Feb. 10	Filed deft's MOTION to dissolve and ANSWER & COUNTERCLAIM.
Feb. 10	Filed deft's BRIEF in opposition to motion to remand and in support of motion to dissolve.
Feb. 11	Filed MOTION for leave to file amicus brief and make oral argument by Dallas Chapter of Associated General Contractors.

Mar. 12 Filed ORDER denying deft's MOTION TO REMAND. Copy to Attys.

May 28 Filed plf's AMENDED COMPLAINT & ANSWER to counterclaim.

June 1 Filed PRETRIAL ORDER, plf shall amend by 5/28/71, set for trial 7/8/71 & trial briefs to be filed by 7 6 71.

Aug. 19 Filed STIPULATION for taking deposition upon written questions, to John A. Cinquemani.

Sept. 21 Filed DEPOSITIONS of Thomas Henger Stewart & Robert O. Burns.

Oct. 15 Filed BRIEF OF AMICUS ASSOCIATED GENERAL CONTRACTORS.

Nov. 9 Filed FINDINGS OF FACT & CONCLUSIONS OF LAW.

Nov. 18 Filed JUDGMENT after trial before the Court that plf take nothing and deft is granted declaratory relief pursuant to 28 USC Sec. 2201. Deft shall recover costs from plaintiff. (Copies mailed to attorneys of record). Contract is declared legal.

Nov. 26 Filed MOTION FOR AMENDED AND SUPPLEMENTAL FINDINGS OF FACT AND CONCLUSIONS OF LAW.

Nov. 29 Filed plf's MOTION FOR NEW TRIAL.

Dec. 17 Filed ORDER denying plf's motion for new trial and motion for amended & supplemental findings of fact & conclusions of law. (Copy mailed to attorneys of record)

1972

Jan. 4 Filed Ptf. Connell Construction Co., Inc.'s, NOTICE OF APPEAL Cy. of Notice mailed by appellant to appellee. (Cy. to Court of Appeals)

Jan. 10 Filed Pltf's BOND FOR COSTS ON APPEAL ($300 Surety)

Jan. 28 Filed TRANSCRIPT OF PROCEEDINGS held Oct. 12, 1971 with exhibits: PX-1, 2, 3, 4, 5, 5a, 6 and 6a
DX-1, 5, 6, 7, 8, 9, 10, 11

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[1] PLAINTIFF'S ORIGINAL PETITION

Filed: Jan. 21, 1971

In the District Court in and for the G-134th Judicial District, Dallas County, Texas

Connell Construction Company, Inc.

versus

Plumbers and Steamfitters Local Union No. 100, of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitters Industry of the United States and Canada, AFL-CIO

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now CONNELL CONSTRUCTION COMPANY, INC., hereinafter referred to as Plaintiff, complaining of PLUMBERS AND STEAMFITTERS LOCAL UNION NO. 100, OF THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTERS INDUSTRY OF THE UNITED STATES AND CANADA, AFL-CIO,

hereinafter referred to as Defendant, and as grounds for such Complaint, would respectfully show the Court as follows:

I.

Plaintiff is a Texas corporation engaged in the business of building construction, with its principal office located in Dallas County, Texas.

II.

Defendant is an Association, operating as a Union, in Dallas County, Texas, and service of process may be made upon it by serving Mr. O. D. (Dale) Seastrunk, or Mr. A. B. (Pat) Patterson, Business Agents of the Defendant, at Defendant's office located at 1727 Young Street, Dallas, Dallas County, Texas, or, in the alternative, service may be effected on the officer or agent in charge of Defendant's office at the same address.

III.

That, heretofore, on the 3rd day of December, 1970, Plaintiff received the letter attached hereto and incorporated herein as though fully set out and marked Exhibit "A", requesting that the Plaintiff sign the form of Agreement attached hereto and incorporated herein as though fully set out and marked Exhibit "B", which Agreement Plaintiff has not signed.

IV.

That, by such Agreement, the Defendant seeks to force Plaintiff to refrain and refuse in the future to

do business with any firm or company concerning any type of construction work falling within the trade jurisdiction claimed by the Defendant at construction sites if such firm or company does not have a contract with the Defendant. The last paragraph of such Agreement reads as follows:

> "THEREFORE, the contractor and the union mutually agree with respect to work falling within the scope of this agreement that is to be done at the site of construction, alteration, painting or repair of any building, structure, or other works, that is the contractor should contract or subcontract any of the aforesaid work falling within the normal trade jurisdiction of the union, said contractor shall contract or subcontract such work only to firms that are parties to an executed, current collective bargaining agreement with Local Union 100 of the United Association of Journeymen and Apprentices of the Plumbing and Pipe fitting Industry." (sic).

V.

That the Plaintiff has collective bargaining agreements with various unions representing its employees, however, Plaintiff has no collective bargaining agreement with the Defendant for the reason that it normally subcontracts its plumbing and mechanical portions of construction contracts to other firms or companies which regularly perform such work.

VI.

That at approximately 1:00 o'clock p.m. on the 15th day of January, 1971, the Defendant sent one of its members to picket the Plaintiff's construction work located at 8700 Stemmons Freeway, where Plaintiff is constructing a multi-story office building for Bruton Venture. The lettering on the picket sign being carried by the member of Defendant reads as follows:

"Connell Construction Co.
Gen. Cont.
Does not have a
Subcontract with
U.A.P.P. Local 100
We are picketing the
above employer only."

That upon the arrival of the member of Defendant carrying such picket sign on the jobsite, approximately One Hundred and fifty (150) men, some employees of Plaintiff and some employees of subcontractors, left the jobsite, refusing to work as long as the picket sign was on the abovesaid construction project. That such picketing by the Defendant of the Plaintiff's work site is for the sole purpose of forcing Plaintiff to sign the abovesaid illegal Agreement.

VII.

That on the 19th day of January, 1971, Plaintiff sent

a letter to Mr. Pat Patterson, Business Agent of the Defendant, informing Mr. Patterson that the Agreement the Defendant is trying to force on the Plaintiff is in violation of the Anti-Trust laws of this State and requesting that the picket line be removed; however, such picket has continued and is continuing at this time. A true and correct copy of such letter is attached hereto and incorporated fully herein and marked Exhibit "C".

VIII.

That the Plaintiff presently has subcontracts for plumbing and mechanical work only with firms who, in fact, do have collective bargaining agreements with the Defendant Union; however, the Defendant seeks to prevent Plaintiff from receiving bids and doing business on a competitive basis within the frame work of the free enterprise system by limiting Plaintiff's right to subcontract plumbing and mechanical work to only those companies who have a current executed collective bargaining contract with the Defendant. In this connection, Plaintiff would show the Court that in the past it has done business with numerous firms who, upon information and belief, did not have a collective bargaining agreement with the Defendant, and Plaintiff desires to retain its right to do business with such firms and others who may or may not have a current collective bargaining agreement with the Defendant.

IX.

That such proposed Agreement which Defendant seeks to force on the Plaintiff is an illegal agreement

in direct violation of the Anti-Trust laws of the State of Texas for the following reasons:

1. Such Agreement would create an illegal Trust between Plaintiff and Defendant as defined in Vernon's Texas Codes Annotated, Business and Commerce Code, Section 15.02(b), for the reason that such agreement would restrict trade, commerce and free pursuit of a lawful business, insofar as the Plaintiff's right to contract or do business with firms or companies which do not have a binding collective bargaining agreement with the Defendant.

2. Such Agreement, if entered into, would create an illegal conspiracy in restraint of trade between Plaintiff and Defendant as explicitly prohibited by Section 15.03 of the Texas Business and Commerce Code, for the reason that such Agreement, as proposed by Defendant to the Plaintiff, would prohibit Plaintiff from dealing with, or doing business with third parties who did not have a binding collective bargaining agreement with the Defendant Union.

3. An Agreement in the form that Defendant is attempting to force on the Plaintiff is illegal as stated in Section 15.04 of the Texas Business and Commerce Code.

X.

That the Agreement which Defendant is attempting to force on the Plaintiff would cause the Plaintiff to subcontract work only to firms or companies who have an agreement with the Defendant; thereby making the Plaintiff a party to an Agreement which could be relied on to deny employment to persons who are not members of the Defendant Union, in violation of the Texas Right To Work Law, Article 5207 a V.A.C.S.

XI.

That the Plaintiff petitions this Court for a Declaratory Judgment that the proposed contract which Defendant is trying to force on it through the picketing of its construction project is illegal, being in violation of the Anti-Trust, and other Statutes of this State, and that all efforts, whether by picketing, coercion, economic pressure, or other means, to obtain such Agreement, or one similar thereto, are also illegal, and the Plaintiff further prays that should the Court find such contract to be illegal, that it issue a permanent injunction enjoining and restraining the Defendant from picketing or attempting in any other way, to force the Plaintiff to sign such Agreement as the one presented here, or any containing similar illegal terms.

XII.

That Plaintiff would further show the Court that the actions of the Defendant, in continuing to picket the Plaintiff's abovesaid construction project, are delay-

ing vital work on such construction project which involves a total contractual commitment in excess of FIVE MILLION ($5,000,000.00) DOLLARS; that Plaintiff is suffering, and will continue to suffer, irreparable harm and damage before notice may be given and a hearing held on a temporary injunction; therefore, Plaintiff would show the Court that Defendant, its agents, officers and members should be restrained and enjoined from picketing, handbilling, refusing to work, on said construction project, encouraging others to refuse to work on said construction project, or taking any other action for the purpose of requiring or forcing the Plaintiff to enter into an Agreement with the Defendant whereby Plaintiff is restricted from doing business with any firm or company now, or in the future. Therefore, Plaintiff petitions this Court to issue and enter a temporary restraining Order enjoining and restraining the Defendant, its officers, agents and members from the action complained of, such Order to remain in full force and effect until this Court may have a hearing and consider whether or not it should issue a Temporary Injunction restraining such actions pending a determination of this cause.

XIII.

Plaintiff would further show the Court that it has no adequate remedy at law to prevent the substantial monetary loss and damage it is sustaining and will continue to sustain unless this Court immediately issue its Temporary Restraining Order and subsequent Temporary Injunction until this Court can determine whether or not the Agreement the Defendant seeks from the Plaintiff is illegal.

WHEREFORE, PREMISES CONSIDERED, Plaintiff, CONNELL CONSTRUCTION COMPANY, INC., prays that the Court immediately issue its Temporary Restraining Order to continue until a hearing can be held on Plaintiff's application for Temporary Injunction, restraining and enjoining the Defendant Union, its agents, officers and members, from picketing, handbilling, or engaging in activity directly or indirectly designed to force or induce the Plaintiff to enter into a contract or agreement in the form attached hereto, or any form of agreement requiring the Plaintiff to cease doing business with any other firm or company, now or in the future, and Plaintiff further prays that the Court set a time and date, ordering the Defendant to appear and show cause herein, if any it has, why such Restraining Order should not be matured into a Temporary Injunction pending a final hearing herein, and that upon final hearing hereof, Plaintiff prays that the Court issue a Declaratory Judgment declaring the Agreement which Defendant is presently attempting to force the Plaintiff to enter into, as stated above, is illegal, in contravention of the valid Anti-Trust Statutes and/or other laws of the State of Texas, and that any attempts by whatever means, to obtain such an Agreement are likewise illegal, and that this Court issue a Permanent Injunction permanently enjoining and restraining the Defendant, its officers, agents and members from engaging in any activity, whether by picketing or other means to induce or force the Plaintiff to agree not to do business with any other firm or company which does not have a binding, cur-

rent, collective bargaining agreement with the Defendant, and Plaintiff further prays that it recover its costs herein expended and for such other and further relief, at law and in equity, special and general, to which it may show itself justly entitled.

Respectfully submitted,

SMITH, SMITH, DUNLAP & CANTERBURY
(Signed) JOE F. CANTERBURY, JR.
JOE F. CANTERBURY, JR.
4000 First National Bank Building
Dallas, Texas 75202 748-7051
Attorneys for Plaintiff

EXHIBIT A

UNITED ASSOCIATION
of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada

LOCAL UNION 100, CITY Dallas, STATE Texas, DATE November 25, 1970.

Connell Construction Company
10939 Shady Trail
Richardson, Texas 75220

Gentlemen:

This Local is engaged in a continuing effort to improve and protect the wages and work opportunities of those it represents through lawful and legitimate means. In this connection the enclosed contract has been prepared and is tendered to you with the request that you execute and return it to this Local.

The contract was drafted to conform to the provisions of Section 8 (e) of the Labor-Management Relations Act. Should you have any doubt as to its legality, please advise us promptly.

We hope that you will see fit to execute the enclosed contract. In the event you decide not to become a party to this agreement we would appreciate your early reply. Should we have not heard from you by Monday, December 7, 1970, we will interpret your silence as a rejection. In the event you should refuse to sign the enclosed contract, it is our intention to employ the lawful means available to us to protest this refusal.

By this proposed contract we do not seek for you to terminate any existing contractual or business relationship, nor do we seek to force or require your firm to recognize or bargain with this organization, and we do not seek to organize your employees. Our sole purpose in proposing the enclosed contract and any efforts that may in the future be made to obtain such contract are those purposes made lawful by Congress in the enactment of Section 8 (e) of the Labor-Management Relations Act.

Be assured that all activities by this Local to secure and/or enforce this contract will be in strict compliance with state and federal law. Should you ever have information to the contrary, please advise the undersigned promptly, so that any necessary steps can be taken to insure that there are no violations of the law.

We shall appreciate your consideration of this request.

Sincerely,

(Signed) A. B. "PAT" PATTERSON
A. B. Pat' Patterson
Business Agent
Plumbers & Steamfitters
Local Union No. 100

be
opeiu #277

EXHIBIT B

AGREEMENT

This Agreement entered into this ____ day of _____, 1970, by and between the signatory contractor, hereinafter referred to as Contractor, and Local Union No. 100 of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry hereinafter referred to as Union,

WITNESSETH

WHEREAS, the contractor and the union are engaged in the construction industry, and

WHEREAS, the contractor and the union desire to make an agreement applying in the event of subcontracting in accordance with Section 8 (e) of the Labor-Management Relations Act;

WHEREAS, it is understood that by this agreement the contractor does not grant, nor does the union seek, recognition as the collective bargaining representative of any employees of the signatory contractor; and

WHEREAS, it is further understood that the subcontracting limitation provided herein applies only to mechanical work which the contractor does not perform with his own employees but uniformly subcontracts to other firms;

THEREFORE, the contractor and the union mutually agree with respect to work falling within the scope of this agreement that is to be done at the site of construction, alteration, painting or repair of any building, structure, or other works, that is the contractor should contract or subcontract any of the aforesaid work falling within the normal trade jurisdiction of the union, said contractor shall contract or subcontract such work only to firms that are parties to an executed, current collective bargaining agreement with Local Union 100 of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry.

_____

Union

_____

Contractor

EXHIBIT C

January 19, 1971

Mr. Pat Patterson
Business Agent
Plumbers and Steam Fitters Union Local 100
1727 Young Street
Dallas, Texas 75201

Re: Picketing at Bruton Venture Project

Dear Mr. Patterson:

We are surprised that you are picketing our project located at 8700 Stemmons Freeway in an effort to force us to sign an agreement with you stating in effect that we cannot do business with any company that does not have an agreement with your Union. It is somewhat ironical that the very project that you are picketing on has a union mechanical subcontractor. If we should sign the agreement that you are trying to force on us, we would be in violation of the antitrust laws of the State of Texas. Therefore, we request that you withdraw your picket line.

Very truly yours,

CONNELL CONSTRUCTION CO., INC.

Thomas H. Stewart

THS:an

THE STATE OF TEXAS)

COUNTY OF DALLAS)

BEFORE ME, the undersigned authority, a Notary Public in and for said County and State, on this date personally appeared THOMAS H. STEWART, to me well known to be the President of CONNELL CONSTRUCTION COMPANY, INC. and a credible person of lawful age, qualified in all respects to make this Affidavit, who, being first duly sworn, on his oath says that he has read the foregoing Petition designed to be used in the cause of CONNELL CONSTRUCTION COMPANY, INC. vs. PLUMBERS AND STEAMFITTERS LOCAL UNION NO. 100, in the District Court of Dallas County, Texas, and knows the contents of such Petition and that such Petition and every statement and allegation of fact thereof is true and correct.

(Signed) THOMAS H. STEWART
THOMAS H. STEWART,
Affiant

SUBSCRIBED AND SWORN TO before me by the said THOMAS H. STEWART at Dallas, Texas, this 21st day of January, 1971, to certify which witness my hand and seal of office.

(Signed) TERESA DILLARD
Notary Public in and for
Dallas County, Texas

TEMPORARY RESTRAINING ORDER

THE STATE OF TEXAS

TO

PLUMBERS AND STEAMFITTERS LOCAL UNION NO. 100

WHEREAS, in a certain suit pending in the District Court of the 134th Judicial District of Texas, wherein CONNELL CONSTRUCTION COMPANY, INC. Plaintiff and PLUMBERS AND STEAMFITTERS LOCAL UNION NO. 100, OF THE UNITED ASSOC. OF JOURNEYMEN & APPRENTICES OF THE PLUMBING AND PIPEFITTERS INDUSTRY OF THE UNITED STATES AND CANADA, AFL-CIO Defendant, the said PLAINTIFF prayed for and obtained from the Hon. CHARLES E. LONG, JR. Judge of the 134th Judicial District, his most gracious TEMPORARY RESTRAINING ORDER and the said Plaintiff having given bond, as required by the fiat of the judge of the 134th Judicial District Court.

Now, Therefore, you, the said PLUMBERS AND STEAMFITTERS LOCAL UNION NO. 100 your Counselors, Solicitors, Attorneys, Agents, Servants and employees are hereby commanded to DESIST and REFRAIN from picketing, handbilling, or participating in such activity directly or indirectly, in person or by other means CONNELL CONSTRUCTION CO., INC., either at its construction site located at 8700 Stemmons Freeway, Dallas, Texas, such construction site being a multi-story office building project for Bruton Ven-

ture, or at any other location within the jurisdiction of this Court, where an object of such picketing, handbilling, or similar activity is to force, require, or induce, the said CONNELL CONSTRUCTION CO., INC. to sign and enter into an agreement in the form attached to Plaintiff's Original Petition, or into any form of contract or agreement requiring the Plaintiff to agree not to do business now or in the future with any other firm, company or person. Its officers, agents, and members, are restrained and enjoined from taking any action whatsoever, directly or indirectly, in person or by agents, to obtain such an agreement or contract from the Plaintiff until formal hearing is held herein.

until the further order of the District Court to be holden within and for the County of Dallas Judicial District of Texas at the Courthouse thereof, in the City of Dallas, at 9:30 A.M. on Feb. 1, 1971 A.D. 19 , when and where this writ is returnable.

HEREIN FAIL NOT, under the penalty of the law.

WITNESS: BILL SHAW, Clerk of the District Courts of Dallas County, Texas.

Given under my hand and the seal of said Court, at office in the City of Dallas, this 21st day of January A.D. 1971

Attest: BILL SHAW,
Clerk District Courts,
Dallas County, Texas.

(Signed) KAYE ROPER
Kaye Roper
Deputy.

[6] DEFENDANTS MOTION TO DISSOLVE, ORIGINAL ANSWER AND COUNTER CLAIM

(Number and Title Omitted)

Filed: Feb. 10, 1971

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now the Defendant Plumbers and Steamfitters Local Union No. 100 and in response to Plaintiff's Original Petition would respectfully show the Court:

MOTION TO DISSOLVE TEMPORARY RESTRAINING ORDER

The state court in which this proceeding was originally filed granted a temporary restraining order, without notice or an opportunity to be heard, restraining the Defendant from peaceful picketing in support of its lawful demand for a subcontractor agreement. Although the Defendant does not concede that the injunction continues in force and effect, in order that there be no question concerning the vitality of the injunction, Defendant requests that it be dissolved inasmuch as it was issued by the state court in excess of its jurisdiction, and inasmuch as this controversy is one affecting interstate commerce and rising under the federal labor statutes, thereby preempting the state courts of jurisdiction over the controversy; and the injunction should be dissolved for the further reason that this matter has been properly removed to the federal court, and the federal court is prohibited by virtue of the provisions of the Norris-La-Guardia Act, 29 U.S.C. Section 104, from granting or maintaining in effect the injunctive relief sought by the Plaintiff.

DEFENDANT'S ANSWER

1.

Defendant admits the allegations of paragraph I of Plaintiff's Original Petition.

2.

Defendant is an unincorporated association, and a labor organization as that term is defined in the National Labor Relations Act and the other federal statutes governing labor management relations. Defendant acknowledges proper service of this action.

3.

Defendant admits the allegations of Paragraph III of Plaintiff's Original Petition.

4.

Paragraph IV of Plaintiff's Original Petition accurately quotes the contract proposed to the Plaintiff, and Defendant asserts that the contract, as is made explicit in the face of the agreement, is "in accordance with Section 8(e) of the Labor-Management Relations Act."

5.

The allegations of paragraph V of Plaintiff's Original Petition are correct insofar as this Defendant is aware, and these allegations are admitted.

6.

Defendant concedes that on or about the date indicated and at the location indicated the Defendant did engage in peaceful primary picketing of the Plaintiff with a picket sign that read substantially as alleged in paragraph VI of Plaintiff's Original Petition. Defendant is not sufficiently advised of the facts to either admit or deny paragraph VI insofar as it alleges that there were work stoppages by some one hundred and fifty employees. Defendant admits, and indeed alleges that the picketing was for the sole purpose of securing Plaintiff's agreement to the proposed contract, which contract has been made expressly lawful by Section 8(e) of the Labor-Management Relations Act, and the decisions thereunder by the National Labor Relations Board and the federal courts in interpreting and applying the aforesaid provision of federal law.

7.

Defendant acknowledges receiving the letter attached as Exhibit C and states that before it had an opportunity to respond to the letter Plaintiff filed suit in the state court and obtained a temporary restraining order without any prior notification to Defendant or Defendant's counsel without affording an opportunity to the Defendant to be heard in defense of its conduct.

8.

With respect to the allegations of paragraph VIII of Plaintiff's Original Petition, Defendant does not dispute the factual allegations therein contained. It does, however, assert affirmatively that the contract which Defendant seeks is one that Congress has expressly made lawful, and one that the state courts of Texas are deprived of jurisdiction to invalidate.

9.

Defendant denies the allegations of paragraph IX, and says that Congress having authorized the agreement in question, the anti-trust laws of the State of Texas are inoperable inasmuch as this is a field of law that has been exclusively occupied by federal legislation.

10.

The Defendant denies the allegations contained in paragraph X both as to the factual assertions and legal conclusions, and asserts as in the preceding paragraph that the field having been occupied by federal legislation, the Texas right to work law is inoperable.

11.

With respect to the allegations of paragraph XI, Defendant denies that there is jurisdiction in either the state or federal court to enjoin the picketing in question and asserts that as appears in its counter claim hereinafter pled, Defendant is entitled to declaratory

judgment declaring that the contract it seeks is lawful and that the statutes of the State of Texas may not be relied upon to invalidate the contract.

12.

With respect to the allegations of paragraph XII of Plaintiff's Original Petition, Defendant concedes that the amount in controversy is in excess of $10,000.00 as alleged by Plaintiff's Original Petition and concedes that the controversy clearly affects interstate commerce within the meaning of the Labor-Management Relations Act as amended. As to the balance of the allegations therein contained and the legal conclusions therein contained, they are denied.

13.

Defendant denies the allegations of paragraph XIII of Plaintiff's Original Petition.

14.

By way of counter claim the Defendant asserts that the contract it seeks is lawful, expressly authorized by Congress in Section 8(e) of the Labor Management Relations Act as amended, and that the Defendant is entitled to declaratory judgment declaring that the contract it seeks is lawful and expressly authorized by Congress in the enactment of Section 8(e) of the Labor-Management Relations Act. Further, Defendant is entitled to a declaration that the agreement in question, having been authorized by Congress, may not be invalidated by the operation of state law.

WHEREFORE, premises considered, Defendant prays that it be granted declaratory relief as prayed for above, that the Plaintiff's prayer for relief be in all things denied, and that the Defendant recover its costs.

Respectfully submitted,

CLINTON & RICHARDS
205 TEXAS AFL-CIO BLDG.
308 West 11th Street
Austin, Texas 78701

(Signed) DAVID R. RICHARDS
David R. Richards

---

[9] PLAINTIFF'S AMENDED COMPLAINT AND ANSWER TO THE DEFENDANT'S COUNTERCLAIM

(Number and Title Omitted)

Filed: May 28, 1971

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Comes now CONNELL CONSTRUCTION COMPANY, INC., Plaintiff herein, and files this its Amended

Complaint and Answer to the Defendant's Counterclaim, complaining of PLUMBERS AND STEAMFITTERS LOCAL UNION NO. 100, OF THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTERS INDUSTRY OF THE UNITED STATES AND CANADA, AFL-CIO, and would respectfully show the Court as follows:

I.

This cause was originally filed in the 134th District Court in and for Dallas County, Texas. The Defendant filed a Petition with this Court for removal, to which Petition Plaintiff responded with a Motion to Remand. This Court has entered its Order Denying Plaintiff's Motion to Remand, to which Order Plaintiff excepts and objects.

II.

Plaintiff is a Texas corporation engaged in the business of building construction, with its principal office located in Dallas County, Texas;

Defendant is an association operating as a Union in Dallas County, Texas, and service of process has been effected upon the Defendant;

This Court has heretofore held that it has jurisdiction over this cause of action by refusing to remand it to the State Court; Plaintiff further invokes this Court's jurisdiction pursuant to 15 USCA §4 and the Federal Declaratory Judgment Act. 28 USCA §2201, et seq.

III.

That, heretofore, on the 3rd day of December, 1970, Plaintiff received the letter attached hereto and incorporated herein as though fully set out and marked Exhibit "A", requesting that the Plaintiff sign the form of Agreement attached hereto and incorporated herein as though fully set out and marked Exhibit "B", which Agreement Plaintiff has not signed.

IV.

That, by such Agreement, the Defendant seeks to force Plaintiff to refrain and refuse in the future to do business with any firm or company concerning any type of construction work falling within the trade jurisdiction claimed by the Defendant at construction sites if such firm or company does not have a contract with the Defendant. The last paragraph of such Agreement reads as follows:

> "THEREFORE, the contractor and the union mutually agree with respect to work falling within the scope of this agreement that is to be done at the site of construction, alteration, painting or repair of any building, structure, or other works, that is the contractor should contract or subcontract any of the aforesaid work falling within the normal trade jurisdiction of the union, said contractor shall contract or subcontract such work only to firms that are parties to an executed, current collective bargaining agreement with Local Union 100 of

the United Association of Journeymen and Apprentices of the Plumbing and Pipe fitting Industry." (sic).

V.

That the Plaintiff has collective bargaining agreements with various unions representing its employees, however, Plaintiff has no collective bargaining agreement with the Defendant for the reason that it subcontracts its plumbing and mechanical portions of construction contracts to other firms or companies which regularly perform such work, and the Plaintiff has no employees represented by the Defendant herein.

VI.

That at approximately 1:00 o'clock p.m., on the 15th day of January, 1971, the Defendant sent one of its members to picket the Plaintiff's construction work located at 8700 Stemmons Freeway, where Plaintiff is constructing a multi-story office building for Bruton Venture. The lettering on the picket sign being carried by the member of Defendant read as follows:

"Connell Construction Co.
Gen. Cont.
Does not have a
Subcontract with
U.A.P.P. Local 100
We are picketing the
Above employer only."

That upon the arrival of the member of Defendant carrying such picket sign on the jobsite, approximately One Hundred and Fifty (150) men, some employees of Plaintiff and some employees of subcontractors, left the jobsite, refusing to work as long as the picket sign was on the abovesaid construction project. That such picketing by the Defendant of the Plaintiff's worksite was for the sole purpose of forcing Plaintiff to sign the abovesaid illegal Agreement.

VII.

That, on the 19th day of January 1971, Plaintiff sent a letter to Mr. Pat Patterson, Business Agent of the Defendant, informing Mr. Patterson that the Agreement the Defendant is trying to force on the Plaintiff is in violation of the Anti-Trust laws of this State and requesting that the picket line be removed; however, such picket was not removed until the 134th District Court entered its Temporary Restraining Order. A true and correct copy of such letter is attached hereto and incorporated fully herein and marked Exhibit "C".

VIII.

That the Plaintiff presently has subcontracts for plumbing and mechanical work only with firms who, in fact, do have collective bargaining agreements with the Defendant Union; however, the Defendant seeks to prevent the Plaintiff from receiving bids and doing business on a competitive basis within the framework of the free enterprise system by limiting Plaintiff's right to subcontract plumbing and mechanical work to only those companies who have current executed collective bargaining contracts with the Defendant. In

this connection, Plaintiff would show the Court that in the past it has done business with numerous firms who, upon information and belief, did not have a collective bargaining agreement with the Defendant, and Plaintiff desires to retain its right to do business with such firms and others who may or may not have a current collective bargaining agreement with the Defendant.

IX.

That such proposed Agreement which Defendant seeks to force on the Plaintiff is an illegal agreement in direct violation of the Anti-Trust laws of the State of Texas for the following reasons:

1. Such agreement would create an illegal Trust between Plaintiff and Defendant as defined in Vernon's Texas Codes Annotated, Business and Commerce Code, Section 15.02(b), for the reason that such agreement would r e s t r i c t trade, commerce and free pursuit of a lawful business, insofar as the Plaintiff's right to contract or do business with firms or companies which do not have a binding collective bargaining agreement with the Defendant.

2. Such agreement, if entered into, would create an illegal conspiracy in restraint of trade between Plaintiff and Defendant as explicitly prohibited by Section 15.03 of the

Texas Business and Commerce Code, for the reason that such agreement, as proposed by Defendant to the Plaintiff, would prohibit Plaintiff with dealing with, or doing business with third parties who did not have a binding collective bargaining agreement with the Defendant Union.

3. An agreement in the form that Defendant is attempting to force on the Plaintiff is illegal, as stated in Section 15.04 of the Texas Business and Commerce Code.

X.

That the Agreement which Defendant is attempting to force on the Plaintiff would cause the Plaintiff to subcontract work only to firms or companies who have an agreement with the Defendant; thereby making the Plaintiff a party to an agreement which could be relied on to deny employment to persons who are not members of the Defendant Union, in violation of the Texas Right To Work Law, Article 5207(a) V.A.C.S.

XI.

That, in addition to being in violation of the laws of the State of Texas, as alleged above, Plaintiff alleges that such Agreement would be violative of the laws of the United States for the reason that the contract which Defendant seeks to force upon the Plaintiff would violate Sections 1 and 2 of the Sherman Anti-Trust Act, 15 USCA § 1 and § 2.

XII.

That Plaintiff petitions this Court for Declaratory Judgment that the proposed contract which Defendant attempted to force on it through the picketing of its construction projects is illegal, being in violation of the Anti-Trust laws of the State of Texas and in violation of the Sherman Anti-Trust Act, and that all efforts, whether by picketing, coercion, economic pressure, or other means, to obtain such Agreement or one similar thereto, are also illegal, and Plaintiff further prays that the Court issue a Permanent Injunction and such other Orders as are necessary in the premises, enjoining and restraining Defendant from picketing, or attempting in any other manner, to force the Plaintiff to sign such Agreement as the one complained of herein, or any Agreement containing similar terms.

XIII.

In answer to the counter-claim of the Defendant contained in Paragraph 14 of Defendant's Original Answer, Plaintiff denies the allegations contained in such paragraph.

WHEREFORE, PREMISES CONSIDERED, Plaintiff, CONNELL CONSTRUCTION COMPANY, prays that, upon the trial of this case, this Court enter its Declaratory Judgment holding that the contract which Defendant has attempted to force upon it and all efforts to obtain such contract are illegal, being in violation

of the Anti-Trust Statutes of the State of Texas and of the United States, and Plaintiff further prays that the Court, pursuant to 15 USCA §4, enter its Order permanently enjoining the Defendant, its agents and members, from attempting in any manner to force the Plaintiff to enter into the contract complained of herein and Plaintiff further prays that it recover its costs herein expended and for such other and further relief, at law and in equity, special and general, to which it may show itself justly entitled.

Respectfully submitted,

SMITH, SMITH, DUNLAP & CANTERBURY
(Signed) JOE F. CANTERBURY, JR.
JOE F. CANTERBURY, JR.

THE STATE OF TEXAS)
COUNTY OF DALLAS)

BEFORE ME, the undersigned authority, a Notary Public in and for said County and State, on this day personally appeared JOE F. CANTERBURY, JR., known to me to be the person whose name is subscribed to the foregoing instrument, who, being by me first duly sworn, on his oath states that he is the attorney for CONNELL CONSTRUCTION COMPANY, INC. in the Cause No. CA-3-4455-B, CONNELL CONSTRUCTION COMPANY, INC. vs. PLUMBERS AND STEAMFITTERS LOCAL NO. 100, in the United States District Court for the Northern District of Texas, and that he is familiar with the contents of the foregoing Amended Complaint and Answer to Counterclaim and that every

statement and allegation of fact therein contained is true and correct.

(Signed) JOE F. CANTERBURY, JR.
JOE F. CANTERBURY, JR.,
Affiant

SUBSCRIBED AND SWORN TO before me by the said JOE F. CANTERBURY, JR. at Dallas, Texas, this 27th day of May, 1971, to certify which witness my hand and seal of office.

(Signed) TERESA DILLARD
Notary Public in and for
Dallas County, Texas

(SEAL)

EXHIBITS A, B & C omitted — Already printed on pages 12-16 of the printed Appendix.

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[12] FINDINGS OF FACT AND CONCLUSIONS OF LAW

(Number and Title Omitted)

Filed: Nov. 9, 1971

This suit was filed in the 134th Judicial District Court of Texas by Connell Construction Company, Inc., v. Plumbers & Steamfitters Local Union No. 100 of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitters Industry of the United

States and Canada, AFL-CIO. Plaintiff sought injunctive relief against picketing and a declaratory judgment that the efforts of defendant to obtain a certain contract were illegal. The Defendant filed a petition for removal to this Court, to which petition Plaintiff responded with a motion to remand. This Court denied Plaintiff's motion to remand.

In an amended complaint, Plaintiff alleges that the contract which Defendant seeks to have Plaintiff sign is illegal contending that it violates the Anti-Trust laws of Texas, the Texas Right to Work Law and the Sherman Anti-Trust Act. Plaintiff seeks a permanent injunction against the Defendant from picketing for the purpose of obtaining the contract and for a declaratory judgment that the proposed contract is illegal. Defendant contends the proposed contract is not illegal, being made lawful by Section 8(e) of the Labor-Management Relations Act. Defendant has filed a counter-claim in which it has asked for a declaratory judgment that the contract in question has been authorized by Congress and does not violate any state or federal laws.

Findings of Fact

1. Plaintiff is a Texas Corporation engaged in the building construction business with its principal office located in Dallas County, Texas. It is engaged in interstate commerce, or in a business affecting interstate commerce.

2. Defendant is an unincorporated association, and a labor organization as that term is defined in the Na-

tional Labor Relations Act and other federal statutes governing labor management relations.

3. Plaintiff does not, and has not, employed plumbers and steamfitters, and at all times material to this case Plaintiff has had no employees who are members of, or who are represented by Defendant.

4. Although, on occasion, an owner may choose to include the mechanical installation of a project in Plaintiff's contract, it is customary for Plaintiff to include the mechanical installations as a portion of its total contract, which mechanical work Plaintiff uniformly subcontracts to other companies or firms.

5. On November 25, 1970, A. B. (Pat) Patterson, representative of Defendant, forwarded to Plaintiff a proposed contract which stated as its purpose:

> "Whereas, the contractor and the union desire to make an agreement applying in the event of subcontracting in accordance with Section 8(e) of the Labor Management Relations Act."

The last paragraph of the proposed contract read as follows:

> "Therefore, the contractor and the union mutually agree with respect to work falling within the scope of this agreement that is to be done at the site of construction, alteration, painting or repair of any building, structure, or other works, that is the contractor should contract or subcontract any of the aforesaid work falling within the normal trade jurisdiction of the

> union, said contractor shall contract or subcontract such work only to firms that are parties to an executed, current collective bargaining agreement with Local Union 100 of the United Association of Journeymen and Apprentices of the Plumbing and Pipe fitting Industry." (sic).

6. The letter accompanying the proposed contract stated that "the contract was drafted to conform to the provisions of Section 8(e) of the Labor Relations Act." Said letter and proposed contract were received by Plaintiff on December 3, 1970.

7. In the past Plaintiff has subcontracted the mechanical installation of its construction projects to some firms which do not have a Collective Bargaining Agreement with Defendant as well as some firms which do have such an agreement with Defendant.

8. On or about January 15, 1971, Defendant, not having heard from Plaintiff, picketed a construction site of Plaintiff located at 8700 Stemmons Freeway, Dallas, Texas, where Plaintiff was constructing a multi-story office building. Such picketing was conducted by a single picket and was not attended by any violence.

9. The sign carried by a member of Defendant read as follows:

> "Connell Construction Co.
> Gen. Cont.
> Does not have a
> Subcontract with

U.A.P.P. Local 100
We are picketing the
Above employer only."

10. Defendant's picketing of Plaintiff's jobsite was for the purpose of obtaining Plaintiff's signature to the contract form set out above and which was introduced as Px 3.

11. When Defendant's picket appeared at Plaintiff's job site some of the employees of Plaintiff and of its sub-contractors left the job site and refused to work.

12. For a period in excess of ten years Plaintiff has on occasion subcontracted mechanical work to a firm known as Texas Distributors, with which Defendant has no Collective Bargaining Agreement.

13. Defendant has picketed other general contractors in the Dallas area and an agreement similar to the one involved herein has been obtained from some of these contractors.

14. The picket placed by Defendant on Plaintiff's job site remained from the 15th of January, 1971 until the 21st of January, 1971, when such picketing was restrained by the Judge of the 134th District Court of Dallas County, Texas.

15. On March 28, 1971, Plaintiff and Defendant signed a contract containing a provision "that if Contractor should contract or subcontract any of the aforesaid work falling within the normal trade jurisdiction of Union, said Contractor shall contract or subcontract

such work only to firms that the parties to an executed current collective bargaining agreement with Local Union 100. . ."

16. The contract signed by the parties also provided "that Contractor — has entered into this agreement under protest and that said Contractor has instituted proceedings to test the legality of this Agreement."

17. Thereafter Plaintiff lost two jobs in which the successful Contractor contracted with Texas Distributors, a non union company, to perform the mechanical work.

18. At the time Defendant sent the contract in question to Plaintiff, Defendant had agreements with some 75 contractors in the Dallas area.

19. Defendant sent a similar contract to the one involved in this case to K.A.S. Construction Company in Richardson, Texas, and picketed the company. K.A.S. refused to sign the proposed agreement and made a complaint to the Regional National Labor Relations Board in Fort Worth, Texas. NLRB refused to issue a complaint and appeal was filed with the General Counsel of the NLRB in Washington. On August 30, 1970, the appeal was denied by the General Counsel.

Conclusions of Law

1. Section 8(e) of the Labor Management Act being directly involved in the allegations of Plaintiff's complaint the motion to remand was properly denied.

2. Plaintiff seeks to invalidate a contract which Defendant contends was drafted to conform to the provisions of Section 8(e) of the Labor Management Act. The legality of the proposed contract under Section 8(e) is a federal question giving this Court jurisdiction.

3. The subcontractor clause is authorized and protected by the proviso of Section 8(e) of the National Labor Relations Act. *Construction Laborers Local 383 v. NLRB*, 323 F2d 433 (9th circ. 1963).

4. The contract being protected by the proviso to Section 8(e) of the Act picketing to secure it is not unlawful. 323 F2d 422 (9th Circ. 1963). *Orange Belt District Council of Painters v. NLRB*, 328 F2d 534 (D.C. Circ. 1964); *Los Angeles Building & Construction Trade Council*, 183 NLRB No. 102 (1970).

5. The legislative history of Section 8(e) clearly shows the intent of Congress. The Norris-La Guardia Act enacted in 1932 "established that the allowable area of union activity was not to be restricted — to an immediate employer-employee relation." *U. S. v. Hutcheson*, 312 U.S. 219, 231. Section 13(c) of the Norris-La Guardia Act provided that the term labor dispute and thus the scope of immunity "includes any controversy concerning terms or conditions of employment — *regardless of whether or not the disputants stand in the proximate relation of employer and employee.*" 47 Stat. 73 (Emphasis added).

Labor abuses of this broad immunity resulted in the Taft-Hartley Act prohibitions against secondary activi-

ties contained in Section 8(b) (4)(A) which as amended in 1959 is now Section 8(b)(4)(B). The Landrum-Griffin Act of 1959 did not expand Section 8(b)(4)(A). Section 8(e) in Landrum-Griffin was clearly a compromise. It does not expand the type of conduct condemned by Section 8(b)(4)(B), but in the proviso it exempts the construction industry from such prohibitions, indicating an intention by Congress to return to the broad provisions of Norris-La Guardia to enlarge the scope of immunity, "regardless of whether the disputants stand in the proximate relation of employer and employee." *Woodwork Manufacturer v. NLRB*, 386 U.S. 612 (1967).

6. Labor legislation is "to a marked degree, the result of a conflict and compromise between strong contending forces and deeply held views on the role of organized labor in the free economic life of the Nation and the appropriate balance to be struck between the uncontrolled power of management and labor to further their respective interests." *Local 1976, United Brotherhood of Carpenters v. Labor Board*, 357 U.S. 93, 99-100. The proviso of Section 8(e) is clearly the result of conflict and compromise and was "added to preserve the status quo in the construction industry and exempt the garment industry from the prohibitions of Sec 8(e) and 8(b)(4)(B)" *Woodwork Manufacturers v. NLRB, supra.*

7. The agreement in question being authorized by Congress such a contract does not violate Federal Anti-Trust statutes. *Suburban Tile v. Rockford Building Trades Council*, 354 F2d 1 (7th Cir. 1965).

8. The states are not free to regulate conduct which is the subject of federal regulation and the contract in question does not violate Texas Anti-Trust laws or the Texas Right to Work Law.

9. The Plaintiff, Connell Construction Company, Inc., is not entitled to an order enjoining Defendant, its agents and members from picketing to obtain the contract in question.

10. The contract in question is found to be legal and in conformity with Section 8(e), 29 U.S.C. Section 158(e).

(Signed) SARAH T. HUGHES
United States District Judge

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[13]

JUDGMENT

Filed: Nov. 18, 1971

In the United States District Court
For the Northern District of Texas
Dallas Division

Connell Construction Company, Inc.

versus

Civil Action
No. CA 3-4455-B

Plumbers and Steamfitters Local Union No. 100 of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitters Industry of the United States and Canada, AFL-CIO

This action came on for trial on the merits before the Honorable Sarah T. Hughes, United States District Judge, on the 12th day of October, 1971, and the Court having heard and considered the evidence and stipulations of the parties and duly considered the briefs and arguments of counsel, and all the issues herein having been duly tried, and the Court having jurisdiction of this cause, therefore, in accordance with the findings of fact and conclusions of law heretofore signed and entered by the Court, it is

ORDERED, ADJUDGED, DECREED and DECLARED:

(1) that the declaratory and injunctive relief sought by the Plaintiff be denied and Plaintiff take nothing by its action;

(2) the Defendant is granted declaratory relief pursuant to the provisions of 28 U.S.C., Section 2201 and the contract in question is declared to be legal and in conformity with Section 8(e) of the Labor Management Relations Act as amended and further said contract is declared not to be in violation of either the Texas anti-trust laws of the Texas right-to-work law;

(3) the Defendant shall recover of the Plaintiff its costs of action;

(4) To all of which action, Plaintiff excepted.

Signed and entered this 16th day of December, 1971.

(Signed) SARAH T. HUGHES
Sarah T. Hughes
United States District Judge

APPROVED AS TO FORM:

(Signed) DAVID R. RICHARDS
David R. Richards
CLINTON & RICHARDS
600 West 7th
Austin, Texas 78701
ATTORNEYS FOR DEFENDANT

(Signed) JOE F. CANTERBURY, JR.
Joe F. Canterbury, Jr.
SMITH, SMITH, DUNLAP & CANTERBURY
40th Floor First National Bank Bldg.
Dallas, Texas 75202
ATTORNEYS FOR PLAINTIFF

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[16] ORDER

(Number and Title Omitted)

Filed: Dec. 17, 1971

Came on to be considered the Plaintiff's Motion for New Trial and Motion for Amended and Supplemental Findings of Fact and Conclusions of Law, and the Court having duly considered all such motions and requests, and being of the opinion that same should be denied in all respects; it is therefore

ORDERED, ADJUDGED and DECREED that the Plaintiff's Motion for New Trial and Motion for Amended and Supplemental Findings of Fact and Conclusions of Law are hereby in all respects denied, to which action Plaintiff noted its exception.

Signed and entered this 1 day of December, 1971.

(Signed) SARAH T. HUGHES
Sarah T. Hughes
United States District Judge
Northern District of Texas

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[17] NOTICE OF APPEAL

Filed: Jan. 4, 1972

In the United States District Court for the
Northern District of Texas
Dallas Division

Connell Construction Company, Inc.

Civil Action
versus No. CA 3-4455-B

Plumbers and Steamfitters Local Union No. 100 of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitters Industry of the United States and Canada AFL-CIO

Notice is hereby given that CONNELL CONSTRUC-

TION COMPANY, INC., Plaintiff above named, hereby appeals to the United States Court of Appeals for the Fifth Circuit from the final judgment entered in this action on the 18th day of November, 1971.

SMITH, SMITH, DUNLAP & CANTERBURY
(Signed) JOSEPH F. CANTERBURY, JR.
JOSEPH F. CANTERBURY, JR.
4050 First National Bank Building
Dallas, Texas 75202 — 748-7051
Attorneys for Plaintiff

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[19] TRANSCRIPT OF PROCEEDINGS

(Number and Title Omitted)

Filed: Jan. 28, 1972

[1] REPORT OF PROCEEDINGS had on the 12th day of October, 1971, before the Honorable Sarah T. Hughes, U. S. District Judge, at Dallas, Texas, and without a jury, in the above styled and numbered cause.

APPEARANCES: Mr. Joseph Canterbury, For the Plaintiff; Mr. David Richards, For the Defendants

[3] THE COURT:
For the record, will you give the full names to the Court Reporter, please?

MR. CANTERBURY:
Joe Canterbury, Connell Construction Company, for the plaintiff, 4050 First National Bank Building.

MR. RICHARDS:
David Richards, 600 West Seventh, Austin, Texas, for the defendant, Plumbers Local.

MR. KELLER:
If the Court please, we have been in these proceedings as amicus, and I guess it is proper for me to give my name to the Court Reporter.

THE COURT:
In what way are you going to participate?

MR. KELLER:
I'm not going to participate, other than to make an argument, or a few statements as amicus, if possible.
We had had a motion which had been granted, where we received notification of all settings in these proceedings — except this hearing. We were not advised until yesterday afternoon that this case would be tried today. We would like to have an opportunity to file a short brief within the next two or three days, with the permission of the Court. We make [4] that request for the reason that we did not, as I have stated, know that these proceedings were set today.

THE COURT:
Will you state your name?

MR. KELLER:
William L. Keller, 2424 First National Bank, Dallas, Texas.

THE COURT:
All right, Mr. Canterbury, will you state your allegations briefly.

MR. CANTERBURY:

May it please the Court, Your Honor, this case involves the attempt of Plumbers and Steamfitters Union Local 100 to force, by picketing and economic coercion, Connell Construction Company to enter into a contract, whereby Connell Construction Company, who is the general contractor, would agree that it would no longer do business with any plumber or mechanical firm which did not have a contract with Local 100.

It is our position, Your Honor, that this type of agreement violates the Antitrust Laws of the State of Texas, the Federal Antitrust Laws, in that the Union in this case has attempted to get an employer, Connell Construction Company, to assist it in achieving goals over other employees over which Connell has no control; Connell Construction Company has no employees who are members of the Union involved in this case, its employees are members of various [5] unions that Connell Construction Company hires.

We petition the Court, and will show the Court through stipulations and some short evidence that the agreement on its face, which they have picketed Connell for does violate the Antitrust laws and we will petition for a Declaratory Judgment so holding, and also for an injunction enjoining further picketing, in violation of the Antitrust Law.

Thank you, Your Honor.

THE COURT:

Mr. Richards.

MR. RICHARDS:

Very briefly, Your Honor, we think that this is a mat-

ter that is governed exclusively by the National Labor Relations Act. This is a contract that is specifically authorized by a provision of the National Labor Relations Act, Section 8 E, and the National Labor Relations Board has so held. It was an agreement that was specifically contemplated by Congress, when, in 1959, they enacted the Amendments to this law. And our brief contains references as to statements in the Congressional Record, both by Senators Kennedy and Goldwater to just this effect.

The agreement having been authorized by Congress in the National Labor Relations Act, we say it simply makes no sense to say that it would be a violation of either State Antitrust Laws, or Federal [6] Antitrust law. And we have cited cases to Your Honor, one from the Fifth Circuit, the case that I was involved in which is specifically in point, and another from the Ninth Circuit, and numerous NLRB decisions holding this particular contract and picketing to obtain such a contract be lawful activity under the National Labor Relations Act.

That is our position. We think that we are entitled to a Declaratory Judgment that the contract is entirely lawful.

THE COURT:

Mr. Keller, do you wish to say anything?

MR. KELLER:

Our motion to intervene was filed on behalf of Associated General Contractors, which is an association comprised of contractors. Mr. Connell is a member of that association, as are other contractors who have

been picketed by this union for similar types of sub-contract agreements.

We agree with the position of the plaintiff, that the conduct in question, and the type of agreement that they have demanded, does contravene the State Anti-trust Laws and the Federal Antitrust Laws, primarily for the reason that, number one, it seeks to impose conditions outside of what is traditionally recognized as the employer-employee relationship.

[7] Mr. Connell in this case did not hire members of this union, did not have a contract with this union; there would be no basis for this contract between Mr. Connell and this union.

THE COURT:

Will the witnesses who are present please stand up and be sworn?

(Witnesses sworn)

MR. CANTERBURY:

May it please the Court, and prior to calling our first witness, we have some agreed stipulations of fact which we would like to enter as Plaintiff's Exhibit Number One, Your Honor. They have been signed by counsel for both parties.

(Plaintiff's Exhibit No. 1 marked for identification.)

MR. RICHARDS:

I think there are some attachments that are supposed to accompany the petition. Are they attached?

MR. CANTERBURY:

No. I will introduce into evidence the two attach-

ments that we have been talking about.

The plaintiff calls Mr. George Connell.

GEORGE CONNELL,

having been duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

[8] DIRECT EXAMINATION

BY MR. CANTERBURY:

Q Would you state your name and address for the Court, please.

A George T. Connell, 3524 Bryn Mawr.

Q Mr. Connell, what is your position with Connell Construction Company?

A I am owner, and Chairman of the Board.

Q How long has Connell Construction Company been in business, Mr. Connell?

A 24 years.

Q And what is the nature of the business of Connell Construction Company?

A The construction of commercial industrial manufacturing buildings.

Q Commonly known as is what is a general contractor?

A General building contractor.

Q Mr. Connell, how do you obtain construction jobs and prospects?

A By competitive bidding, and by negotiations.

Q In submitting bids through negotiations, or through competitive bidding, do you obtain bids from various mechanical and plumbing sub-contractors [9] for the mechanical portion of the work?

A Yes, I do.

Q How do you select the mechanical contractor, assuming you are the successful general contractor?

A You mean the one that we award the contract to?

Q Yes. Assuming you are successful, how do you choose your mechanical sub-contractor?

A By the low responsible bidder.

Q Do you require your mechanical sub-contractor to hire only union, or non union personnel?

A No.

Q Do you make any requirements of your sub-contractors concerning their labor policy?

A No.

Q Do you hire any plumbers?

A No.

Q Mr. Connell, over the past 24 years, has Connell Construction Company done business on a regular basis with various mechanical sub-contractors, both union and non union?

A Yes.

Q Could you name some for the Court with which you have a continuing relationship?

[10] A My memory is not that good. But I have a few notes here.

Q Do you have some notes you could use to refresh your memory?

A Yes. I have a list of the last 24 mechanical and plumbing contractors with which we have done business.

Q Out of that list of 24 how many, if you know, are open shop, or non-union mechanical sub-contractors?

A I believe that there is 12 open shops, and 12 non-union. One of them I'm not sure of — I don't know what his labor policy is.

Q Would you list the open shop ones for the Court, please?

A American Air Conditioning, Avery Air Conditioning, Brandt Engineering, Burnett Services, Dallas Heating and Air Conditioning, Frymire Engineering, Harrington Brothers, T. B. Levy and Son Plumbing Company, Phillips and Shaw Plumbing Company, Spencer Air Conditioning, and Texas Distributors, Incorporated.

Q These 12 companies you just named, have you done more than one job with these companies?

A For the most part, yes.

Q And in your opinion as a general contractor, [11] have they been responsible sub-contractors, and qualified?

A In each case, yes.

Q Mr. Connell, does Connell Construction Company have collective bargaining agreements with various unions covering your employees?

A Yes, we do.

Q Which crafts do you have collective bargaining agreements with, which unions?

A We have the carpenters, cement finishers, iron workers, hoisting engineers, and I believe the bricklayers.

Q Common laborers?

A Common laborers, yes.

Q Of those classifications of crafts you just named, do you employ people directly in your employ?

A Yes.

Q Mr. Connell, would it injure your competitive bidding procedures if you could not use the 12 companies you just named?

A Absolutely.

MR. RICHARDS:

We will object, and move to strike as conclusionary, Your Honor.

THE COURT:

I sustain the objection.

[12] He may be more specific, if he wants.

Q (By Mr. Canterbury) Mr. Connell, if you were in your competitive bidding processes when you obtain a bid for mechanical portions of the job, do you solicit competitive bids?

A Yes.

Q Without regard to the labor policies of the company from whom you solicit these bids?

A Yes.

Q If 12 of the companies which you have named, you could no longer use, would this reduce the competition from which you benefit?

A Yes.

Q Would this, in turn, injure your competitive portion on your bidding process to an owner?

A Yes.

MR. RICHARDS:

The same objection, Your Honor.

THE COURT:

I will overrule the objection.

Q (By Mr. Canterbury) Mr. Connell, would you like to continue doing business with the companies you have just named?

A Yes.

MR. CANTERBURY:

I will pass the witness, Your Honor.

[13] CROSS EXAMINATION

BY MR. RICHARDS:

Q Mr. Connell — is that correct?

A That's correct.

Q Does the list include, that you have before you, the 12 union contractors that you have done business with?

A Yes, it does.

Q Why don't you give us, for the record, if you would.

A Would you like me to read them?

Q If you would, please, sir.

A Beard Plumbing Company, Burden Brothers, Cohn-Daniel, Continental Mechanical, Dallas Air Conditioning, The Farwell Corporation, General Mechanical, Kieffer Plumbing and Heating, W. H. Kuhn and Sons, the Natkin Company, C. Wallace Industries, and Sam P. Wallace Company.

Q Are most of those local contractors, that is, Dallas area contractors?

A Yes, sir.

Q And would you say about them, as you did about the non-union contractors that you listed, that they are responsible mechanical contractors?

A Yes, sir.

[14] Q And so we are clear, if I understand the typical practice, you, as a general contractor, submit a bid to the owner for an over-all construction project and that over-all price would include various aspects that you will ultimately sub-contract out; is that true?

A Yes.

Q And among those is, typically, the mechanically contracting portion; is that correct?

A Yes.

Q And others are electrical, I suppose — is that correct?

A Yes.

Q — elevator, perhaps, or — what are the others?

A All components that make up a job.

Q And if I understand the practice to be — strike that.

As I understand the practice to be, once you have been successful in securing the award of the general contract, you then would, in turn, award those components which you intend to sub-contract out; is that correct?

A That's correct.

Q And it is customary in the industry for [15] the mechanical contracting portion to be uniformly sub-contracted; is that correct?

A Yes.

Q And mechanical, so we understand it, in layman's terms, is essentially what? Plumbing, heating, and air conditioning?

A Plumbing, heating, ventilating, and air conditioning, right.

MR. RICHARDS:

That's all the questions that I have. Thank you.

REDIRECT EXAMINATION

BY MR. CANTERBURY:

Q Mr. Connell, is it a common and usual practice for an architect on a construction project to specify the names of acceptable mechanical and electrical contractors?

A It is a common practice.

Q Has your company bid on any jobs recently where both union and open shop mechanical firms have been specified?

A Yes.

MR. CANTERBURY:

That's all the questions that I have, Your Honor.

MR. RICHARDS:

No further questions.

THE COURT:

You may step down, Mr. Connell.

[16] MR. CANTERBURY:

The plaintiff will call Mr. Tommy Stewart.

THOMAS STEWART,

having been duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

BY MR. CANTERBURY:

Q State your name and address for the Court, please.

A Thomas Hanger Stewart, 4018 Deep Valley Drive, Dallas.

Q How are you employed, Mr. Stewart?

A With Connell Construction Company, as President.

Q How long have you been with Connell Construction Company?

A Approximately six years.

Q And how long have you been President?

A Approximately a year and a half.

Q Mr. Stewart, do you prepare bids on construction projects?

A Yes, I help in the preparation.

THE COURT:

Will you lean a little closer to that loudspeaker, if you will.

Q (By Mr. Canterbury) You heard Mr. Connell [17] testifying. When you prepare bids, do you also solicit competitive bids from mechanical sub-contractors?

A Yes.

Q Both union, and open shop?

A Yes.

MR. CANTERBURY:

Mark this, please.

(Plaintiff's Exhibits Nos. 2 and 3 marked for identification.)

Q (By Mr. Canterbury) Mr. Stewart, I hand you what has been marked as Plaintiff's Exhibit No. 2 and Plaintiff's Exhibit No. 3. I ask you if you can identify these exhibits?

A Yes, I believe I can.

Q What is Plaintiff's Exhibit No. 2?

MR. RICHARDS:

I'm sure we can stipulate to it, Counsel, if you would rather, if it is quicker.

MR. CANTERBURY:

Yes, that is all right.

For the record, Plaintiff's Exhibit 2 is a letter addressed to Connell Construction Company, dated November 25, 1970, such letter being sent by Local 100, and signed by Mr. Pat Patterson, as Business Agent.

Plaintiff's Exhibit No. 3 is a proposed contract which was attached and received with Plaintiff's [18] Exhibit 2, by the plaintiff.

We offer Plaintiff's Exhibits 2 and 3 into evidence.

MR. RICHARDS:

No objection. As I understand it, they are also referred to in our stipulation.

MR. CANTERBURY:

Yes.

MR. RICHARDS:

No objection.

THE COURT:

They may be admitted.

Q (By Mr. Canterbury) Mr. Stewart, after you — did you receive Plaintiff's Exhibit No. 2, being the letter which we have referred to?

A Yes, I did.

Q Did you receive, along with it, the attached contract?

A Yes.

Q Did you sign that contract?

A Yes.

Q Plaintiff's Exhibit No. 3? Let me show it to you.

A Okay.

Q Take a look at it, Mr. Stewart.

MR. RICHARDS:

Counsel, we will stipulate that he did not sign the contract at that time; he sent us back a letter — if that will move it along the line.

[19] MR. CANTERBURY:

I was going to suggest we could go home, Your Honor.

THE WITNESS:

No, Your Honor, this one I didn't, no. I received it in the mail.

Q (By Mr. Canterbury) Mr. Stewart, it has been stipulated in this case that Local 100 picketed a construction project of Connell, known as the Bruton Ventures project.

Did you see the picketing being conducted at the construction project on Stemmons Freeway?

A Yes, I did.

Q Do you recall how long the picketing lasted?

A Several days. I don't remember the exact time.

Q When the picketing started, Mr. Stewart, do you know how many employees, either employees of Connell Construction Company, or other sub-contractors, left the job?

A Approximately 150, I believe it was, were put out of work.

Q And it has further been stipulated that the picketing was to obtain your signature, or the signature of Connell Construction Company, on the agreement which has been introduced in evidence as [20] Plaintiff's Exhibit 3?

A Yes, it was.

Q Now, did you make any progress while the picketing was going on, on the construction project?

A No, we didn't.

Q Did your employees refuse to work while the picketing was going on?

A Yes, they did.

Q Would employees of the various other crafts of which you had sub-contracted work, would they work on the project?

A Most of them refused to cross the picket line and work.

Q Who was your mechanical sub-contractor on this project?

A Dallas Air Conditioning.

Q To your knowledge, is Dallas Air Conditioning a union contractor?

A Union, yes, I believe so.

Q And has a contract with Local 100?

A Yes.

Q Mr. Stewart, after we filed this lawsuit in State Court, and we wound up in Federal Court, did you subsequently enter into an agreement with Local 100?
[21] A Yes.

MR. CANTERBURY:
Mark this, please.
(Plaintiff's Exhibit No. 4 marked for identification.)
Q (By Mr. Canterbury) I hand you Plaintiff's Exhibit No. 4, and ask you if this is the agreement that you entered into in March of 1971?
A Yes, it is.

MR. RICHARDS:
No objection.

MR. CANTERBURY:
Your Honor, for the record, I would like to paraphrase this short agreement entered into between Local 100, and Connell in March of 1971.
The agreement is basically the same agreement which the union picketed for and which this lawsuit is over, that Connell not subcontract any work to any firm that does not have a collective bargaining agreement with Local 100. It does contain a provision that Connell has entered into this agreement under protest and has instituted legal proceedings to test the validity of it.
Q (By Mr. Canterbury) Mr. Stewart, did you enter into the contract which has been marked as Plaintiff's Exhibit No. 4?
A Well, we entered into it under protest.

[22] Q Did you enter into it?

MR. RICHARDS:
I will object to going into why he entered into the contract. I think we can both tell Judge Hughes that this is not a trumped-up lawsuit, if that is what you are worried about.

MR. CANTERBURY:
Do you want to stipulate that he entered into the contract on threat of further picketing, to avoid further picketing?

MR. RICHARDS:
I will stipulate that he will so testify.
Q (By Mr. Canterbury) Do you so testify, Mr. Stewart?
A Yes.
Q Mr. Stewart, after you entered into the contract marked as Plaintiff's Exhibit No. 4, did you attempt to use any non-union mechanical sub-contractors after that time?
A No, we did not.
Q Did you bid on any construction projects after that time?
A Yes, we have.
Q Did you bid on any projects where the architect specified the names of qualified mechanical subcontractors?
A Yes.

[23] MR. CANTERBURY:
Mark this.

(Plaintiff's Exhibits Nos. 5 and 6 marked for identification.)

Q (By Mr. Canterbury) Mr. Stewart, I hand you what has been marked as Plaintiff's Exhibit 5 and ask you if you can identify that instrument?

A Yes. It is a list of approved mechanical sub-contractors on a project we bid, the First National Bank in Garland, Texas.

Q And on Plaintiff's Exhibit 6, can you identify that instrument?

A It, too, is an approved sub-contractor list from architects on the Temple Shalom project in Dallas.

Q This was the Garland National Bank and the Temple Shalom jobs?

A Yes.

Q Did both of these lists list Texas Distributors as an approved sub-contractor?

A I believe, yes.

MR. RICHARDS:

We are going to object to this in terms of materiality. We accept the authenticity of the document. These are events that have transpired that are outside the scope of the pleadings, and we see them as not relevant to the issues here.

[24] THE COURT:

I will overrule the objection.

MR. CANTERBURY:

Your Honor, we offer Plaintiff's Exhibits 5 and 6 into evidence.

THE COURT:

They may be admitted.

Q (By Mr. Canterbury) Mr. Stewart, looking at Plaintiff's Exhibit No. 5 you say that is a list of approved sub-contractors on which project?

A The First National Bank in Garland.

Q How many sub-contractors — we are talking about mechanical sub-contractors only. How many are listed?

A 19.

Q From reviewing that list, if you will, can you tell me how many of them are open shop?

A To the best of my knowledge, approximately eight.

Q Were you the successful bidder on that job?

A No, we were not.

Q How did you come out?

A We were second.

Q Who got the job, if you recall?

A John Rock Construction Company.

Q Do you recall which mechanical firm had the most competitive price for the plumbing and [25] mechanical work on that project?

A Texas Distributors.

Q In view of this contract, you did not use Texas Distributors' bid when you turned in your price, did you?

A No, we didn't.

Q Who is doing the mechanical work on that project?

A Texas Distributors.

Q How much lower was Texas Distributor's bid than the nearest union bid on the project?

A I don't know the exact amount. It was over $10,000.

Q All right, on the Temple Shalom job, how did you come out on that one?

A I believe we were third or fourth bidder.

Q All right. If you would look at the list there, how many sub-contractors were approved for mechanical and plumbing work?

A Eight.

Q How many of them were open shop?

A Four.

Q Which firm turned in the most competitive price for the plumbing and electrical portions of the Temple Shalom job?

[26] A Texas Distributors.

Q And, of course, again you were not able to use their price?

A Correct.

Q Who got the project for the general contractor?

A Ground Engineering Company.

Q Do you know whether or not Ground Engineering Company used Texas Distributors?

A Yes, they did.

Q Have you bid on any other construction projects other than the two we have mentioned here, since March, where you have not been able to use any open shop mechanical bids?

A Yes, we have bid on several jobs, and cannot use them.

Q Were their prices — do you recall the names of any jobs?

A Not offhand, no.

Q Mr. Stewart, were you directly responsible for

preparing the bids of the Temple Shalom job, and the Garland National Bank job?

A I review all bids before they are turned in, yes.

Q Do you make the final review of the bids?

[27] A Yes, along with the estimators.

Q Has your inability, since March, to receive competitive prices from all of the companies which Mr. Connell named, has this injured your possibilities and hurt you in getting construction work?

A Yes, definitely.

Q And jobs for your employees?

A Definitely.

Q I notice on these two projects, Temple Shalom, and the Garland — First National Bank building in Garland, Mr. Stewart, that the architects specified qualified or acceptable mechanical sub-contractors.

Of the projects you bid, what percent would you estimate that the architect specifies which sub-contractor you can use for your mechanical work?

A It is about approximately 50 to 60 percent have been — have had a specified list from the architect.

Q And when you receive your specifications on most projects are both open shop and union mechanical firms listed as approved sub-contractors?

A Yes.

Q Are there any instances where an owner may specify only one mechanical contractor that he will approve on a project?

[28] A Yes, there are. I'm sure there is.

Q Have you ever been on a project where the owner specified only an open shop firm, mechanical firm for doing the mechanical work?

A I have not bid on one, no.

Q Mr. Stewart, of the firms with which Connell Con-

struction Company does mechanical work on a continuing basis, which of the open shop firms would you say that you do the most work with?

A Texas Distributors.

Q How long —

A As far as non-union goes.

Q How long has Connell Construction Company been doing business on a regular basis with Texas Distributors?

A Since I have been employed with them. Long before that, too, to my knowledge.

Q And you know before that time, too?

A Yes.

Q Mr. Stewart, in your capacity as President of Connell Construction Company, do you attempt — prior to entering into this agreement, have you attempted to specify the labor policy of your subcontractors?

A No.

[29] MR. CANTERBURY:

I will pass the witness for now, Your Honor.

CROSS EXAMINATION

BY MR. RICHARDS:

Q Mr. Stewart, referring to Plaintiff's Exhibit No. 5, you indicated of the 19 approved mechanical contractors, eight were open shop. I assume the balance were union contractors; is that correct?

A To the best of my knowledge, yes.

Q Do you remember the approximate dollar volume of the mechanical contract on the bank job?

A No, I can't.

Q Do you remember how much you were beaten on the job by the guy who got the bid?

A Approximately $30,000, I believe, on the base bid.

Q Do you recall the taking of your deposition? Do you, Mr. Stewart?

A Yes.

Q I asked you at that time if you had any information whether Local 100 had reached some understanding, or entered into some conspiracy with mechanical contractors in the area to try to drive Texas Distributors, or anyone else, out of business. Do you recall me asking you that question?

[30] A Yes.

Q And what was your answer to it?

A Not to my knowledge, I believe.

Q You have no information concerning anything like that?

A No.

Q I asked you at the time of your deposition whether you had any information, direct or indirect, of the existence of a plan, or agreement between Local 100 and other contractors, whether they be general contractors, or mechanical contractors, whereby Local 100 will undertake to create a monopoly in the Dallas area for certain contractors.

Do you recall me asking that question?

A Yes.

Q And what was your answer if you recall?

A "Not to my knowledge."

Q And that is your testimony today?

A Yes.

MR. RICHARDS:

That's all that I have. Thank you.

THE COURT:
Is that all?

MR. CANTERBURY:
Your Honor, I have one more question.

[31] REDIRECT EXAMINATION

BY MR. CANTERBURY:
Q Local 100 has attempted to get Connell Construction Company, has it not Mr. Stewart, to agree not to do business with any firm not to their liking?
A Yes, they have.

MR. CANTERBURY:
That's all that I have. Thank you, Mr. Stewart.

THE COURT:
I think the contract speaks for itself.
(Witness excused)

MR. RICHARDS:
May we understand that the witness, when saying, "not to their liking," meant who were not union contractors? May we have that understanding, that that is the answer to the question?

MR. CANTERBURY:
Who are in not contractual relationship, on a current collective bargaining relationship with Local 100.

• • • •

[42] MR. CANTERBURY:
Your Honor, at this time plaintiff calls Mr. Pat Patterson, as an adverse witness.

MR. RICHARDS:
We will concede that he is qualified under 43-B as an adverse witness.
Is it 43-B?

PAT PATTERSON,
called as an adverse witness by the plaintiff, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CANTERBURY:
Q State your name and address for the record, please, sir.
A Pat Patterson, residence, 1465 Templecliff Drive, Dallas.
Q How are you employed, Mr. Patterson?
A Business Representative, Local Union 100, Plumbers and Steamfitters.
Q How long have you been a Business Representative for Local 100?
[43] A Eight years.
Q Mr. Patterson, the agreement which has been introduced into evidence, which you originally sent Connell Construction Company — do you have it up there? I believe so.
A I don't see it.
Q Plaintiff's Exhibit 3.

You are familiar with that agreement, aren't you, Mr. Patterson?

A Yes, I am.

Q Now in that agreement — did you write that agreement?

A Along with the attorney, Mr. Dave Richards. We drafted it.

Q In your agreement you state — if this is correct — that the contractor, whoever you sent it to, shall contract or sub-contract such work only to firms that are parties to an executed current collective bargaining agreement with Local 100; is that correct, sir?

A This is correct.

Q Now at the time that you first sent this agreement to Connell Construction Company, did you have — you did have an agreement, I assume, or Local 100, with various mechanical firms in the Dallas area?

[44] A Yes, sir.

THE COURT:

Answer out, please, sir.

THE WITNESS:

Yes, we had numerous agreements with mechanical contractors in the Dallas area, some 75, probably in number.

Q (By Mr. Canterbury) 75?

A Within the jurisdiction. The Dallas area — our jurisdiction embraces from here to Oklahoma, to Navarro County, east to Sulphur Springs, west to Tarrant County, so that is 75 within the jurisdiction.

(Plaintiff's Exhibit No. 5 marked for identification.)

Q (By Mr. Canterbury) Mr. Patterson, I hand you what has been marked as Plaintiff's Exhibit 5, and ask you if you can identify that instrument?

A Yes.

Q What is Plaintiff's Exhibit 5, sir?

A This is an expired agreement between Local Union 100, and Mechanical Contractors' Association of Dallas.

Q Is that the agreement that you had in force with mechanical contractors in the Dallas area at the time you sent the proposed contract which is the subject of this lawsuit to Connell Construction [45] Company?

A This is the agreement.

Q Is that the agreement you are referring to when you say in your agreement that: "Whoever the contractor may be shall not sub-contract work to anybody who doesn't have an agreement with Local 100"? Is that the one you are referring to?

A Yes, this is the one I refer to.

Q Do you have — would there be any other agreement?

A None other.

Q Well, could a — suppose a sub-contractor mechanical contractor, wanted to get a contract. At the time could they come in and get one on different terms?

MR. RICHARDS:

Excuse me. I object to that. Do you mean could they come in and execute this contract? Is that your question?

MR. CANTERBURY:

I asked him first if they could come in and get one on any different terms than that. He is the business manager.

THE WITNESS:

No. The agreement says that no one will be given a more favorable agreement. I couldn't, if I desired, as an agent, sign an agreement other than the ones in existence between the local [46] contractors and the Local 100.

Q (By Mr. Canterbury) Well, to make sure I understand you, Mr. Patterson, if Texas Distributors walked in at the very day you sent this contract to Connell and said, "We want an agreement for our employees." are you telling me that you could not negotiate one with them; all they could sign is that one right there in that little red book?

A I could not enter into a more favorable, or a less favorable agreement with any contractor than what is signed in this agreement.

Q I see. So that's — in other words, once you sign that contract with the Mechanical Contractors' Association, that sets the only type of agreement which your Union can enter into with any other mechanical contractors; is that correct, sir?

A That is true.

Q Now, since the beginning of this lawsuit, have you now entered into, or has Local 100 now entered into, another contract with mechanical contractors?

A We have entered into an agreement with the North Texas Contractors Association — not the Mechanical Contractors or Dallas, as in the past.

Q On your new agreement, would the same apply,

that if — that you cannot enter into any type [47] agreement, other than the one that you have agreed with North Texas, that it would have to be on the same terms and conditions to all others?

MR. RICHARDS:

I think this calls for speculation. The contract speaks for itself in this regard. I presume.

THE COURT:

Do you have a copy of the contract?

MR. CANTERBURY:

He is correct. I was going to try to save a little time, Your Honor.

(Plaintiff's Exhibit No. 6 marked for identification.)

Q (By Mr. Canterbury) Mr. Patterson, I will hand you what has been marked as Plaintiff's Exhibit 6, and ask you if you can identify that instrument, sir?

A Without reading the entire document, it appears to be the current contract in existence between Local Union 100 and Local Unions No. 146, Dallas and Fort Worth, with the North Texas Contractors Association.

Q Mr. Patterson, if you could look at Article 17, entitled "Working for Others," is that a similar clause that you referred to in the old contract?

MR. RICHARDS:

Well, I would suggest that the contract speaks for itself.

MR. CANTERBURY:

I agree, Your Honor, [48] except the contract is about 35 pages. If I can narrow it down to one clause, I will save time.

THE COURT:

I will permit him to question the witness with regard to that.

MR. RICHARDS:

Let me see if I have the same thing.

Q (By Mr. Canterbury) Excuse me, we have taken it away from you, Mr. Patterson. Have you had a chance to read it?

A Yes, I know what the clause says. The Article 17 I am familiar with.

Q Mr. Patterson, in your own words, what does the clause say?

MR. RICHARDS:

Again I object to that. I think the contract speaks for itself.

MR. CANTERBURY:

He is correct, Your Honor.

THE COURT:

Just read it, if you will. Read it, Mr. Patterson, out loud.

THE WITNESS:

The Union further agrees that during the life of this agreement that it will not grant or enter into any arrangement, or understanding with other employers which provides for any wages less than stipulated in this agreement as the minimum wages for work under any more favorable terms [49] or conditions to the employer than are expressed or implied in this agreement for less than the rate of wages indicated in this agreement.

Contractors agree not to employ any workmen subject to this agreement for less than the rate of wages indicated in this agreement, or under any more favorable terms or conditions than are expressed or implied in this agreement.

Further, no workman covered by this agreement shall bargain or contract for work or lump sum. And, further, the Union agrees that it will not furnish men to any employer not regularly engaged in the pipe trades industry as a plumbing, heating, air conditioning, and/or piping contractor, including rigging contractors; and this condition is not intended to cover members of the union whose regular employment is full time as maintenance men for any organization usually having such classifications of employee on its payroll.

Q (By Mr. Canterbury) Thank you, Mr. Patterson. Since you sent the proposed contract, which has been introduced into evidence, to Connell Construction Company, have you sent similar proposed sub-contractor contracts to other general contractors?

A Yes.

[50] Q In the Dallas area?

A Yes.

Q Do you know how many, sir?

A Since —

Q Yes, sir, since.

A I don't have the — I could give you almost the exact number of the total, but I don't know how many since this time.

Q The total will be fine.

A Total, 45.

Q You have sent out 25?

A Proposed agreements.

Q How many have been signed, sir?

A Give me a minute. Dowd Construction Company, Foursquare Construction Company, Cain, Brogdon and Cain, Cass Construction Company, Miller and Norton Company. That is all that have been signed at this time.

Q Are you presently picketing any general contractors, to your knowledge, is Local 100 presently picketing any general contractors for the same or similar agreement we are talking about in this lawsuit?

A As of today, no. But as of last week, yes.

Q Mr. Patterson, do you know how many Union [51] mechanical firms are in the Dallas area?

A How many Union mechanical firms?

Q Yes, sir.

A Doing business as local contractors, and as national agreement contractors, and as independent contractors, I would say that there are some 80 that are signatory, maybe more or maybe less, but approximately that.

Q Maybe I didn't hear you right. Did you testify that there are 75 parties to which your Union was in a contractual relationship as far as collective bargaining, in your whole jurisdiction?

A This is essentially correct. I don't have the complete list with me, but —

Q But you say there is approximately 80 companies?

A Yes, sir.

Q 80 Union companies?

A Right. I am talking — when I say "Union companies," I mean national agreement contractors who are signatory to our national agreement.

Q You cleared it up for me. Thank you.

Now do you know how many open shop mechanical plumbing companies there are in the City of Dallas? [52] A There are — too numerous to enumerate.

Q Do you know, sir?

A No, I don't know. I have no way of knowing.

Q Have you picketed a company by the name of "Texas Distributors" on numerous occasions?

A Many occasions.

Q Have you ever tried to get a collective bargaining agreement with Texas Distributors?

A Yes. Texas Distributors has made overtures to Local Union 100 throughout the years to signify that they might be inclined to sign an agreement; they always seem to back out at the last moment. And we have never signed them.

Q Has there ever been any question as to whether or not all of their employees will be admitted to the Union if they joined up?

A There is no question on our part. I don't know the thinking of Texas Distributors.

Q Well, how about on your part, if Texas Distributors signed up tomorrow would all of their employees be allowed to come into the Union?

A Yes, all that could qualify. We have certain standards, like any other organization. Certainly we would — if they could meet the qualifications, they would be welcome. That is our purpose, to [53] try to organize the unorganized.

Q How many members does Local 100 have, Mr. Patterson?

A Approximately 1,100. This includes apprentices.

Q Are there any union construction — strike that.

Are there any construction projects which have a union mechanical sub-contractor which work people

who are not members of your union, or not apprentices of your union, to your knowledge, sir?

A Counsel, would you rephrase that?

Q Yes, I will rephrase it.

To your knowledge, are there any individuals working as plumbers for union companies, who are not members of your union?

A Yes. We have what we call a "travel" card.

Q All right, sir.

A I think you are familiar with.

Q Yes, sir, we are very familiar with the travel card.

How about any other classifications?

A We have presently some people working in the status of what we call an "application," whereby [54] they appear to have the qualifications for membership; they make application on a formal form, and upon review are placed in the employment of signatory contractors.

Q In other words, these are men who have applied for membership, and —

A Right, and are working under the same protection, same wages, conditions as members.

Q Do you know of any union mechanical contractor who works men with the permission of Local 100, who are neither travelers, union members, or applicants for union membership?

A Do I know of any one who is signatory?

Q Yes, sir.

A No, I don't.

Q Would you allow it, if you knew of such a condition?

MR. RICHARDS:

I will object. Your Honor. This calls for —

THE COURT:

I sustain the objection.

Q (By Mr. Canterbury) I will rephrase the question.

Mr. Patterson, will Local 100 allow non-union employees who are neither members of the union, applicants, or travel card members, to work on [55] construction projects with companies that have a union contract with your firm?

MR. RICHARDS:

I have the same objection. The contract speaks for itself. It describes what the conditions are.

THE COURT:

I am going to overrule the objection.

MR. CANTERBURY:

Thank you, Your Honor.

THE WITNESS:

Would we allow it?

Q (By Mr. Canterbury) Do you allow it?

A Would we allow it? I don't see that we would have any choice. I think that this is a — to my understanding, this is a right-to-work state. I don't suppose we would have any choice in the matter.

Q Mr. Patterson, have you ever given any trouble or called any employers concerning their hiring non-union plumbers?

A No.

Q You have never asked them to fire one?

A No.

MR. RICHARDS:

Your Honor, this is going awfully far afield from the Complaint, it seems to me.

MR. CANTERBURY:

Your Honor, I don't believe so. We have alleged in our pleadings —

THE COURT:

He has answered the question, [56] and no objection was made.

Q (By Mr. Canterbury) Mr. Patterson, in proposing this contract to Connell Construction Company, prior to the time you proposed it, were you aware of the fact that Connell did business with numerous open shop mechanical firms?

A I wasn't aware of their total labor policy. I don't know how many open shop firms, mechanical, electrical, or otherwise, that they do business with.

Q Did you know they did business with any open shop mechanical firms?

A No, not to my knowledge at the time, I did not. At the time I proposed this, I had already, as I stated, proposed such an agreement to other mechanical — to other general contractors. No.

Q When you started — when Local 100 started picketing on the Bruton Venture project, did not Connell have a union mechanical contractor on that job?

A Yes, they had a union contractor, Dallas Air Conditioning.

Q And the purpose of the picketing, it has been stipulated, was to get Mr. Connell to sign this agreement; correct?

A This is correct.

Q And you wanted Mr. Connell to not do [57] business with any company that doesn't have a contract with Local 100?

A That is what the proposed agreement states, and what my cover letter also asks.

MR. CANTERBURY:

I will pass the witness, Your Honor.

THE COURT:

We will take a 15 minute recess at this time.

(Whereupon, a short recess was taken, after which the proceedings resumed as follows:

THE COURT:

He had passed the witness.

MR. RICHARDS:

No questions.

MR. CANTERBURY:

Excuse me, one more question.

Q (By Mr. Canterbury) Mr. Patterson, in your capacity as Business Manager for Local 100, have you asked Mr. Dave Keller, in his capacity at the Dallas Trades Council, or other unions, not to perform work when you have a picket of the nature you had on Connell's job?

A No. We have never asked Mr. Dave Keller, as Secretary of the Dallas Buildings and Trades Council, nor have we asked any individual union not to perform work on any job.

Q Has your intention to picket general [58] contractors for this type of agreement, has it been discussed in the Buildings and Trades Council?

MR. RICHARDS:

I would object, unless you get specific as to time. I may still have an objection then as to time and specific picketing. Let's find out what they are talking about.

MR. CANTERBURY:

I will rephrase the question, Your Honor.

Q (By Mr. Canterbury) At any time in the last eight months, has picketing by Local 100, for a sub-contractor agreement, been discussed at the Dallas Buildings and Trades Council meetings?

MR. RICHARDS:

I would object to any questions, unless they relate specifically to Connell. I don't know what relevancy this discussion would have with respect to some other picketing for some other contract.

THE COURT:

I will overrule the objection.

THE WITNESS:

The question is, have we discussed sub-contract picketing?

Q (By Mr. Canterbury) By Local 100.

A By Local 100, in the Buildings and Trades Council. No. I think that everyone in the Buildings and Trades individually are aware that we are picketing, because throughout the area we have picketed for the [59] last three years for this type of an agreement. I think that all agents, and most of the members are aware that we are conducting this type of picketing.

MR. CANTERBURY:

I have no further questions, Your Honor.

MR. RICHARDS:

No questions.

MR. CANTERBURY:

If the Court please, at this time the plaintiff rests, Your Honor.

MR. RICHARDS:

Your Honor, we would move to dismiss at this time, on the basis that the plaintiff has failed to prove a violation of either State or Federal antitrust laws. And if Your Honor would like to hear us in detail upon it I am, prepared to support the motion.

THE COURT:

Are you only moving for judgment on the basis of the State antitrust laws, and not on the other point?

MR. RICHARDS:

Both the State antitrust, and Federal antitrust.

May I be heard on it?

• • • •

[64] THE COURT:

I will withhold the ruling on the motion.

MR. RICHARDS:

I was making my motion pursuant to Rule 50. I apologize for not so stating.

We would first, if Your Honor please, then like to

offer a deposition we took by written questions, if I may, by agreement of counsel. We will offer the entire deposition. I will read it in, or, [65] if the Court requires — or, we will offer the testimony, whichever way is most expeditious as far as the Court and Counsel.

THE COURT:

I want you to read whatever part you want me to consider.

MR. RICHARDS:

I shall, Your Honor.

Defendant offers in evidence the deposition, on written questions, taken pursuant to Rule 31 of John A. Cinquemani.

"Q Please state your full name.

A John A. Cinquemani.

Q Are you over 21 years of age?

A Yes.

Q Please state your residence address, including street address, city, and state.

A 7924 Allott Avenue, Van Nuys, California.

Q Please state the name and address of the labor organization or organizations with whom you are employed, and the duration of your employment.

A Los Angeles Building and Construction Trades Council, 1626 Beverly Boulevard, Los Angeles, California. I was appointed to the position of Staff Representative, Los Angeles Building Trades Council in 1953, and in November, 1964, was elected Executive Secretary, and am still serving in that capacity for [66] the Los Angeles Building and Construction Trade Council.

Q Please state briefly your responsibilities and duties of your office, or offices.

A The position of staff representative is to secure and enforce collective bargaining agreements. And the duties of the executive secretary are to supervise the buildings representatives. The executive secretary is the chief administrative officer of the Council. A copy of the by-laws which describes other duties is enclosed."

And thereupon, Exhibit No. 1 was marked, which is the By-Laws of the Council.

We would offer the By-Laws.

MR. CANTERBURY:

Objection, Your Honor. I'm going to object to the rest of the deposition as being completely immaterial. It involves a gentleman in Los Angeles, California, with a Los Angeles Buildings and Trades Council. What goes on in California has no real relation to this lawsuit. I think it is entirely immaterial.

THE COURT:

Will you state what your purpose is, Mr. Richards.

MR. RICHARDS:

Yes, I will. Your Honor, the purpose of the deposition is to show, among other [67] things, that there is — to establish the existence of a collective bargaining agreement, which is attached to the deposition as Exhibit A, and known as the Los Angeles Buildings-Trades Agreement. It contains a provision as follows: "The employer, developer, and/or owner builder agrees that all work performed within the jurisdiction of any union affiliated with the Council shall be performed pursuant to an executed agreement with the appropriate union having work in the territorial juris-

diction, and affiliated with the Council in the area in which the work is performed." We offer that this agreement was in existence, containing language identical to ours, and would affect some 9,000 employers, that this agreement, or one similar to it, has been in existence in the construction industry — in this instance in California — for, according to the deposition, for some 12 or 15 years. It is related also to the fact that when Congress enacted Section 8E of the Act, one of the express purposes was to preserve the integrity of bargaining agreements, sub-contractor agreements in the construction industry. One of the purposes is to show the existence of such agreements before Congress enacted Section 8E, and that the continued existence of such agreements in California, and the [68] fact that this agreement has been the subject of a number of proceedings before the National Labor Relations Board, in cases which we have cited in our brief, and which the Board has uniformly upheld the legality of the agreement.

Now it speaks to, it seems to me, number one, the legality of this agreement under Section 8E, and necessarily the reasonableness of the Agreement under the Sherman and Clayton Act. Obviously, it wouldn't speak to the State laws.

THE COURT:

I will overrule the objection.

MR. CANTERBURY:

May I have a continuing exception to the rest of the deposition, Your Honor?

THE COURT:

Yes, you may.

MR. RICHARDS:

Continuing with question number seven:

"Q Please identify, if you can, the contract attached hereto as Exhibit A.

A Exhibit A is a copy of a current article of the agreement, the collective bargaining agreement, executed by the Buildings Trade Council, which are listed at the end of the Articles of Agreement. This is an agreement to which the Buildings Trade Council secured the signature of employers in the building and construction industry."

[69] We would offer Exhibit A as it is attached to the deposition, it being the Agreement to which I refer in my question.

"Q Is this contract a standard form currently in use by your organization?

A Yes.

Q If you know, over what period of time has Exhibit A been regularly in use by your organization?

A Exhibit A has been in use since August 20, 1965. The predecessor agreement, containing language identical, or similar to Article 4 has been in use since at least 1947 by the Buildings Trade Council. The files of this organization, over which I am custodian, show articles of agreement with language similar to Article 4," — which was the article I read — "dating back to at least 1947. And an example of such an agreement is submitted herewith."

Whereupon it was marked Exhibit 2 for identification.

We offer Exhibit 2.

"Q Does your organization currently have in existence an agreement identical to that exemplified by Exhibit A?

A Yes. Each of the Building Trade Councils listed in Article 12 uses the same form of [70] agreement as exemplified by Exhibit A.

Q Does your organization maintain in the regular course of business a file, or other business record, containing the names of contractors who are currently signatory to your agreement with your oganization of the type exemplified by Exhibit A?

A Yes.

Q Is it customary for entries to be recorded and/or transmitted to the file or record inquired about in the preceding question by an employee or representative of your organization who has personal knowledge of the existence of such agreement?

A Yes.

Q Is such information concerning the existence of such agreements recorded or transmitted at or about the time the contracts are executed?

A Yes.

Q Based on the foregoing records. please state the number of contractors who are currently signatory to an agreement with your organization identical as to form to that exemplified by Exhibit A.

A 9,722.

Q In the records of your organization, as inquired about in questions 11, 12 and 13, do you have [71] available a list of the names and addresses of all contractors who are currently signatory to an agreement identical in form as that exemplified by Exhibit A? If so, please attach a copy of such list to your answers.

A Yes. A copy of the directory of Union contractors listing the names and addresses of the contractors party to both the Building Trades Agreement and to con-

tractor association agreements is attached hereto. Also attached is the current supplement."

Whereupon the directory was marked as Exhibit 3 and the supplement was marked as Exhibit 4 upon instruction of Mr. Reich.

"Q Does your organization enforce or attempt to enforce with respect to contractors who are parties to Exhibit A the sub-contractor limitations provided in paragraph 4(IV)?

A Yes.

Q If your answer is Yes, please state the manner in which your organization enforces the subcontractor limitations.

A Article IV is enforced through court action by the attorneys for the Building Trades Council. At least 25 such suits have been successfully brought [72] and injunctions secured against contractors who have been violating Article IV.

Q Does your organization have contractual relations with any contractors in the construction industry which contracts do not contain the sub-contractor limitations provided in paragraph 4 (IV)?

A No.

Q Has your organization engaged in picketing of any contractor to obtain the contractor's agreement to a contract including the sub-contracting limitations reflected in paragraph 4(IV)?

A Yes.

Q If your answer to the foregoing is "Yes", please provide the names and addresses of all such contractors who have been picketed by your organization for such purpose within the past twelve months?

A We do not have readily acceptable records show-

ing which contracts were secured through picketing. The supplement to the directory of Union contractors shows the names and addresses of both contractors who signed between March 1970 and February 1971.

Q Please state the names, positions and addresses of each person, if any, who assisted you in [73] the preparation of the answers to these questions.

A Julius Reich, attorney for the Los Angeles Building and Construction Trades Council, 1625 West Olympic Boulevard, Los Angeles, California 90015."

We will offer the deposition and the exhibits into evidence.

MR. CANTERBURY:

May I have an objection.

THE COURT:

Yes.

MR. RICHARDS:

Off the record.

(Discussion off the record)

• • • •

[86] BY MR. RICHARDS:

Q Mr. Patterson, I am referring you to Plaintiff's Exhibit 6A, about which you have previously testified, and call your attention to Article 24 —

THE COURT:

State what it is.

MR. RICHARDS:

Yes. This is the current, as I understand it, agreement between Local 100, 146 [87] in Fort Worth, and the North Texas Contractors Association.

Q (By Mr. Richards) Is that correct?

A That is correct.

Q And Mr. Canterbury did not refer to — he had you read a portion of the contract a moment ago.

I would like to ask you to read that portion of Article — the last paragraph of Article XXIV that appears at page 30 of the agreement.

Do you see what I am talking about?

A Yes.

Q Would you read that, please? Read it aloud.

A "Local Union Number 100, and Local Union Number 146 agrees that if during the life of this agreement it grants any employer any better terms or conditions than those set forth in this agreement, such better terms and conditions shall be made available thereafter to all employers for the life of this agreement."

Q That is also a part of the over-all agreement that you currently have in effect with the North Texas Contractors Association?

A It is our agreement.

[88] Q Do you know whether Mr. Connell is a member of the — is Connell Construction Company a member of the North Texas Contractors Association?

A I don't know. I think that they are signatory.

MR. RICHARDS:

Mark this.

(Defendant's Exhibits Nos. 8 through 11, inclusive, marked for identification.)

Q (By Mr. Richards) Mr. Patterson, I think you have testified that, in response to questions from Mr. Canterbury, that you have picketed other general contractors in the Dallas area for an agreement identical to that that is here in issue; is that correct?

A That is correct.

Q Was one of those contractors a Kas Construction Company?

A Yes.

Q I hand you Defendant's Exhibit No. 8, and No. 9, and ask you if those are letters — if Defendant's Exhibit 8 is a letter of yours to Kas Construction Company, on or about the date indicated, of April 9, 1970. Is that what it is?

A This is the letter. It says, "Kas Construction Company."

[89] Q And did that letter include with it a contract?

A Yes.

Q What is —

A This is the same type of contract offered every other general contractor in the area.

Q All right. Is Defendant's Exhibit No. 9 the contract that was sent to Kas — do you want to check it?

A Yes.

Q Did Local 100 thereafter picket Kas Construction Company, in order to secure their agreement to the contract that is here as Defendant's Exhibit No. 9?

A Yes, we did picket.

Q Did Kas Construction Company, thereafter, file charges with the National Labor Relations Board, alleging such picketing violated the National Labor Relations Act?

A Yes, there were charges filed.

Q Was your local union represented by counsel during the investigation of those charges?

A Yes.

Q And who was that?

A David Richards.

Q Were those charges investigated by the [90] Regional Office of the National Labor Relations Board in Fort Worth?

A They were.

Q I hand you what has been marked as Defendant's Exhibit 10, and ask you if you can identify that as a — if you can identify that?

A Yes, I can identify it.

Q Is that a copy of the letter from the Regional Director in Fort Worth, dismissing the charges filed by Kas?

A This is a copy of a letter from Mr. Elmer Davis, Regional Director, dismissing the charges.

Q Did Kas Construction Company thereafter appeal that, if you recall, to the General Counsel of the Labor Relations Board?

A That is correct.

MR. CANTERBURY:

Your Honor, I am going to object to following the proceedings of another case through the NLRB.

MR. RICHARDS:

We think we can tie it up.

THE COURT:

I will overrule the objection.

Q (By Mr. Richards) Is Defendant's Exhibit No. 11 the decision of the General Counsel of the National Labor Relations Board, confirming the dismissal [91] of the charges against Local 100?

A Yes, Exhibit 11 is a letter confirming, from the National Labor Relations Board.

MR. RICHARDS:

We have previously marked these defendant's exhibits, Your Honor. We will offer Defendant's Exhibits 8, 9, 10, and 11 at this time.

MR. CANTERBURY:

Your Honor, I would object to all of them, because the only conclusion — I'm familiar with the matter, as Dave knows. They conclude, in a matter that went to the National Labor Relations Board, the general counsel of the Board dismissed it — one man's opinion. And we have a new General Counsel of the Board now, anyway. So one man's opinion really should not be real evidence in this case.

THE COURT:

I will take that into consideration.

MR. RICHARDS:

Do you agree to the authenticity? Is that correct?

MR. CANTERBURY:

I agree they are true and correct copies.

MR. RICHARDS:

We will offer then, those exhibits.

May they be received, Your Honor?

THE COURT:

They may be admitted.

[92] (Defendant's Exihibits Nos. 8, 9, 10, and 11, inclusive, were received into evidence.)

Q (By Mr. Richards) Mr. Patterson, in picketing Kas Construction Company, do you recall what the picket sign said?

A I think it was a standard-type picket, that we usually use. It is to advertise the fact that Kas Construction Company did not have a subcontract agreement with Local Union Number 100.

Q The same type picket sign that was used at Connell?

A Right.

Q And the contract which you were seeking with Kas Construction Company, was it identical with the contract we propose to Connell; is that correct?

A Correct.

MR. RICHARDS:

That's all that I have, Your Honor.

MR. CANTERBURY:

I have no further questions of this witness, Your Honor.

THE COURT:

You may step down, Mr. Patterson.

MR. RICHARDS:

We rest, Your Honor.

[31] K. L. ROBINSON

• • • •

[37] CROSS EXAMINATION

By Mr. Richards:

• • • •

[38] Q Are you aware generally of the collective bargaining contract to which Mann is a party?

A Yes, I am.

Q Are you aware that they are a party to what is known as an International Agreement with the ironworkers?

A Yes, I am.

MR. RICHARDS:

Mark this.

(Defendant's Exhibit No. 1 marked for identification.)

Q (By Mr. Richards) I will hand you what the reporter has marked as Defendant's Exhibit 1, which is a printed form contract, with no signatures — as you will see — and ask you if you recognize that as being a true copy of the International Agreement to which Mann Steel is presently a party with the Ironworkers International?

A I believe that it is.

MR. RICHARDS:

We would offer Defendant's Exhibit No. 1.

Q (By Mr. Richards) By the way, Mann is a Dallas contractor; is that right?

A Yes, sir.

• • • •

[94] MR. CANTERBURY:

May it please the Court, Your Honor, there is not a lot in factual dispute in this case which is obvious. We have stipulated the majority of the facts. The evidence, and the [95] stipulations unquestionably show that there is an attempt by Local 100 to force an employer, Connell Construction Company, Inc., to assist it — to assist it — in keeping non-union companies from obtaining work on construction projects of Connell. Mr. Patterson testified that he has tried this 40 times.

As far as antitrust, Your Honor, you can readily see that if he is successful, that non-union companies will be driven from the market place on construction work in the Dallas area.

You can see from the evidence — Mr. Stewart testified that we entered into an interim agreement after Her Honor retained jurisdiction in this case, to prevent further picketing, whereby we agreed not to use any open shop mechanical contractors, pending the outcome of this case. When the architects specify, Your Honor, that only particular subcontractors will be allowed on the job, the contractor receives competitive prices; if he is cut off from going to half of the list, then he is in fifty percent less competitive position than anyone else going in.

And what about the companies, Your Honor, who,

for no fault of their own, that — maybe their employees don't want to be union, maybe they would like to belong to another union — it is not for [96] Connell to dictate, or any employer to dictate the labor relations of another employer. Now this is what they are doing. They are trying to drive the companies from the market place. That it restricts competition is obvious. Federally, it also violates Federal antitrust law. When you cut down the number of people who can bid, you have lessened competition; when you enter into an agreement to prevent someone from pursuing a lawful business, it is antitrust. Admittedly — and I think the agreement on its face, I am perfectly satisfied, shows an antitrust violation, Your Honor.

Then we question whether the union is exempt. Admittedly, unions enjoy certain exemptions under the antitrust laws. Your Honor had the Cedarcrest Hat case several years ago where you considered this very issue. In that case you found that they had an antitrust exemption — and they did; they were not trying to get an employer to help them. You said in the Cedarcrest case — and the Fifth Circuit affirmed you, Your Honor — that if a union, acting alone, takes certain action which may be antitrust otherwise, they enjoy exemptions. But if they conspire with an employer, or employers, they forfeit those exemptions.

They have attempted to conspire with Mr. Connell, with Connell Construction Company. Connell [97] Construction Company was an unwilling conspirator, suffered the consequences, had their job shut down. But the attempt to involve an employer to help the union drive other companies from the market place is obvious. Factually it is there.

Now the cases on how a union forfeits its exemption, I have covered them in my brief, Your Honor. Allen Bradley, I think, is the classic case in this area, where a union conspired with an employer or employers to either fix prices, lessen competition, et cetera, it is a violation, they lose their exemption. Now the exemption, if it is lost, the antitrust exemption, if it is lost they have no more right to violate the antitrust laws than Connell Construction Company, or myself, or any other company. They have forfeited their exemption in this case.

I would like to refer quickly to the Gibboney case.

THE COURT:

What case?

MR. CANTERBURY:

The Gibboney case. This was a Supreme Court case in 1949. It is in my brief, Your Honor, and cited therein. The Gibboney case, the Supreme Court in that case recognized that a union violated a state antitrust law by picketing in a manner that violated the state antitrust law. If it [98] troubles Your Honor about the state law versus federal, I think it violates both. But it clearly violates the Federal. The state law, the statutes you can read them out in the Texas Business and Commerce Code. And the agreement which this lawsuit is over is a clearcut violation of every one of them, clearcut. A reading of the statute comparing the agreement is readily obvious.

Your Honor, I would like to talk about Section 8E of the Labor Act. The defendant takes the position that Section 8E authorizes a subcontractor agreement,

therefore state antitrust laws, federal antitrust laws have no application.

Your Honor, 8E does not authorize this type of agreement, nor this type of conduct. In my brief I have covered the legislative history, right through a case known as the Sandori case. Your Honor, the Sandori case official title is United Brotherhood of Carpenters v. NLRB, 78 Sup. Ct., 1011, 1958. In this case there was a subcontractor agreement that carpenters would not handle prefabricated doors, would not handle those goods, they would not have to work with them. A secondary boycott was found. Congress came in 1959 and enacted Section 8E specifically. Then Senator Kennedy stated that Section 8E does not alter the Sandori case. Senator Goldwater did, also. [99] The two of them both agreed on this, that the Sandori case stood. And, also, the secondary boycott principles weren't changes.

What, Section 8E was for, Judge, is to prevent an employer from going and entering into a contract with his employees, or a union representing his own employees. The example is Mr. Connell and the carpenters. And it prevents him from then going out and subcontracting their work away, the work of his own employees whose labor policies he may have something to say about. That type of an agreement being negotiated is legal.

The Fiberboard case, Supreme Court case, which says that sub-contracting is a mandatory subject for bargaining between an employer and a union representing his employees, we readily admit. That is what Section 8E is all about, Your Honor. It is not to allow a union to come in to one employer and say, "Let's

dictate the terms of conditions to somebody else you don't have any control of; I can't organize them, so you just quit doing business with them." And that is what this lawsuit is all about; it is antitrust.

I touch on one other case, Your Honor, I would like for you to read. It is the Pennington case. [100] It is cited in my brief. In Pennington the Supreme Court said, "Parties in one bargaining unit are not free to dictate the terms for parties in another bargaining unit." Connell says he has no plumbers; he is not free to dictate the labor relations policies of his subcontractors.

I have one final important note, Your Honor, to keep in your mind as the real test. Whose employees are they? What are we talking about? The National Woodworkers case cited by Mr. Richards in his brief, in that case the Supreme Court said, "The touchstone is whether the agreement or its maintenance is addressed to the labor relations of the contracted employer, vis-a-vis his own employees." It is not here, Judge. It doesn't have a thing to do with Connell's employees. I think the Supreme Court, when it said that, indicated that first you have to decide here who we are talking about. And unions aren't free, and should not be free to come to a neutral employer and say, "Quit doing business with other people." The neutral employer has no right to control his subcontractors' labor policies.

So, Your Honor, I respectfully request that you grant us the relief which we prayed for. It is needed. You have seen what a bad competitive [101] position it has put my client in. It is going to hurt innocent companies who are just going to be eventually out of busi-

ness. It is antitrust. And I request you so find, Your Honor. Thank you.

MR. CANTERBURY:
Your Honor, we have no further evidence. We request some oral argument.

THE COURT:
Yes, I would be glad to have your argument.
[93] As I understand your brief, and Mr. Richards' brief, it is your contention that because Connell did not employ any workers who were plumbers —

MR. CANTERBURY:
Yes, Ma'am, that's right.

THE COURT:
— that the contract is not a valid contract.
I believe that you can see that if he had employed plumbers, and had a contract with them, that this contract would be a valid contract.

MR. CANTERBURY:
Yes, Your Honor.

THE COURT:
Is that your contention?

MR. CANTERBURY:
That is a fair statement, yes, Your Honor.

THE COURT:
As I understand Mr. Richards, he is saying that re-

gardless of whether or not Connell had any plumbers in his employment, it is a valid contract.

MR. RICHARDS:
Yes, Your Honor. And just as the buildings trades agreements which we have offered in evidence apply to people who have no members working for the general contractor —

THE COURT:
In reading the briefs, it was not clear that any case was directly in point. Now I have not myself had an opportunity to read any of the [94] cases, but the briefs did not indicate that they were directly in point on this particular question.

MR. RICHARDS:
The Kas case is directly in point, Your Honor. But other than that — but that is not a reported decision.

THE COURT:
And it is only a decision —

MR. RICHARDS:
Yes, Your Honor, of the General Counsel of the National Labor Relations Board.

MR. CANTERBURY:
It is not a decision of the National Labor Relations Board.

THE COURT:
Not the Administrative Agency, just the General Counsel himself.

MR. RICHARDS:

Yes, Your Honor. But under the Act, the General Counsel does issue decisions that have — the rules and regulations of the Board set those out. Obviously, it is not a decision of the Board itself; that is correct.

THE COURT:

All right.

MR. CANTERBURY:

May I proceed, Your Honor?

THE COURT:

Yes.

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PLAINTIFF'S EXHIBIT No. 1

STIPULATIONS OF FACT

(Number and Title Omitted)

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Comes now CONNELL CONSTRUCTION COMPANY, INC., Plaintiff, and PLUMBERS AND STEAMFITTERS LOCAL UNION NO. 100, Defendant, by and through their respective attorneys of record, and make the following Stipulations of Fact, such Stipulations being a portion of the facts in this action:

1. That Plaintiff is in the business of building construction with its principal office being located in Dallas County, Texas, and is engaged in interstate commerce, or in a business affecting interstate commerce;

2. That Plaintiff does not, and has not, employed plumbers and steamfitters, and that at all times material to this case, Plaintiff has had no employees who are members of, or who are represented by Defendant;

3. Although, on occasions, an owner may choose not to include the mechanical installation of a project in Plaintiff's contract, it is customary for Plaintiff to have included the mechanical installation as a portion of its total contract, which mechanical work Plaintiff uniformly subcontracts to other companies or firms;

4. That, on November 25, 1970, Mr. A. B. (Pat) Patterson forwarded the letter and proposed contract attached to these Stipulations as Exhibits "A" and "B" to Plaintiff and Plaintiff received such letter and proposed contract on December 3, 1970;

5. That A. B. (Pat) Patterson and O. D. Seastrunk are agents of Defendant;

6. That in the past Plaintiff has subcontracted the mechanical installation of its construction projects to some firms which do not have a Collective Bargaining Agreement with Defendant as well as to some firms which do have such an Agreement with Defendant;

7. That on January 19, 1971, Thomas H. Stewart, President of Plaintiff, forwarded the letter attached to Plaintiff's Amended Complaint as Exhibit "C" to Mr. Patterson who received the same shortly thereafter;

8. That on or about January 15, 1971, Defendant picketed a construction site of Plaintiff located at 8700 Stemmons Freeway, Dallas, Texas, where Plaintiff was constructing a multi-story office building for Bruton Ventures, such picketing was conducted by a single picket and was attended by no violence;

9. That when Defendant's picket appeared at Plaintiff's jobsite some of Plaintiff's employees and some employees of Plaintiff's subcontractors left the jobsite and refused to work;

10. That Defendant's picketing of Plaintiff's jobsite was for the purpose of obtaining Plaintiff's signature to the contract form which is attached hereto as Exhibit "B";

11. That Defendant has never been requested and has never referred any employees to work for Plaintiff;

12. That for a period in excess of ten (10) years Plaintiff has on occasion subcontracted mechanical work to a firm known as Texas Distributors;

13. That Defendant has no Collective Bargaining Agreement with Texas Distributors;

14. That Plaintiff has in the past subcontracted mechanical work to qualified plumbing and mechanical firms whether or not such firms have a Collective Bargaining Agreement with Defendant;

15. That Defendant has picketed other General Contractors in the Dallas area and a similar Agreement has been obtained from some of those General Contractors;

16. That the picket placed by Defendant remained on Plaintiff's jobsite at Bruton Ventures project from the 15th day of January, 1971, until the 21st day of January, 1971, when such picketing was restrained by the Honorable Charles E. Long, Jr., Judge of the 134th District Court of Dallas County, upon allegations of Plaintiff that the actions of Defendant violated the Anti-Trust Laws of the State of Texas.

The above listed Stipulations of Fact are hereby approved and agreed upon.

CLINTON & RICHARDS
(Signed) DAVID R. RICHARDS
DAVID R. RICHARDS
308 West 11th Street, Suite 205
Austin, Texas 78701 — 476-4822
Attorneys for Defendant,
PLUMBERS AND
STEAMFITTERS LOCAL
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(Signed) JOE F. CANTERBURY, JR.
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4000 First National Bank
Building
Dallas, Texas 75202 — 748-7051
Attorneys for Plaintiff,
CONNELL CONSTRUCTION
COMPANY, INC.

PLAINTIFF'S EXHIBIT No. 2

UNITED ASSOCIATION
of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada

LOCAL UNION 100, CITY Dallas, STATE Texas,
DATE November 25, 1970

Connell Construction Company
10939 Shady Trail
Richardson, Texas 75220

Gentlemen:

This Local is engaged in a continuing effort to improve and protect the wages and work opportunities of those it represents through lawful and legitimate means. In this connection the enclosed contract has been prepared and is tendered to you with the request that you execute and return it to this Local.

The contract was drafted to conform to the provisions of Section 8 (e) of the Labor-Management Relations Act. Should you have any doubt as to its legality, please advise us promptly.

We hope that you will see fit to execute the enclosed contract. In the event you decide not to become a party to this agreement we would appreciate your early reply. Should we have not heard from you by Monday, December 7, 1970, we will interpret your silence as a rejection. In the event you should refuse to sign the enclosed contract, it is our intention to employ the lawful means available to us to protest this refusal.

By this proposed contract we do not seek for you to terminate any existing contractual or business relationship, nor do we seek to force or require your firm to recognize or bargain with this organization, and we do not seek to organize your employees. Our sole purpose in proposing the enclosed contract and any efforts that may in the future be made to obtain such contract are those purposes made lawful by Congress in the enactment of Section 8 (e) of the Labor-Management Relations Act.

Be assured that all activities by this Local to secure and/or enforce this contract will be in strict compliance with state and federal law. Should you ever have information to the contrary, please advise the undersigned promptly, so that any necessary steps can be taken to insure that there are no violations of the law.

We shall appreciate your consideration of this request.

Sincerely,

(Signed) A. B. "PAT" PATTERSON
A .B. "Pat" Patterson
Business Agent
Plumbers & Steamfitters
Local Union No. 100

be
opeiu # 277

PLAINTIFF'S EXHIBIT No. 3

AGREEMENT

This Agreement entered into this ____ day of _____, 1970, by and between the signatory contractor, hereinafter referred to as Contractor, and Local Union No. 100 of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry hereinafter referred to as Union,

WITNESSETH

WHEREAS, the contractor and the union are engaged in the construction industry, and

WHEREAS, the contractor and the union desire to make an agreement applying in the event of subcontracting in accordance with Section 8 (e) of the Labor-Management Relations Act;

WHEREAS, it is understood that by this agreement the contractor does not grant, nor does the union seek, recognition as the collective bargaining representative of any employees of the signatory contractor; and

WHEREAS, it is further understood that the subcontracting limitation provided herein applies only to mechanical work which the contractor does not perform with his own employees but uniformly subcontracts to other firms;

THEREFORE, the contractor and the union mutually agree with respect to work falling within the scope of this agreement that is to be done at the site of construction, alteration, painting or repair of any building, structure, or other works, that is the contractor should contract or subcontract any of the aforesaid work falling within the normal trade jurisdiction of the union, said contractor shall contract or subcontract such work only to firms that are parties to an executed, current collective bargaining agreement with Local Union 100 of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry.

_____
Union

_____
Contractor

PLAINTIFF'S AGREEMENT No. 4

AGREEMENT

This Agreement entered into this 28th day of March, 1971, by and between the Signatory Contractor, hereinafter referred to as CONTRACTOR, and Local Union No. 100 of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, hereinafter referred to as UNION,

WITNESSETH:

WHEREAS, CONTRACTOR and UNION are engaged in the construction industry; and,

WHEREAS, CONTRACTOR and UNION desire to make an agreement applying in the event of subcontracting in accordance with Section 8(e) of the Labor-Management Relations Act; and,

WHEREAS, it is understood that by this Agreement, CONTRACTOR does not grant, nor does UNION seek, recognition as the collective bargaining representative of any employees of the Signatory CONTRACTOR: and,

WHEREAS, it is further understood that the subcontracting limitation provided herein applies only to mechanical work which CONTRACTOR does not perform with its own employees, but uniformly subcontracts to other firms:

NOW THEREFORE, CONTRACTOR and UNION mutually agree with respect to work falling within the

scope of this Agreement that is to be done at the site of construction, alteration, painting or repair of any building, structure, or other works, that if CONTRACTOR should contract or subcontract any of the aforesaid work falling within the normal trade jurisdiction of UNION, said CONTRACTOR shall contract or subcontract such work only to firms that are parties to an executed, current collective bargaining agreement with Local Union 100 of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry.

It is the further understanding of the parties hereto that CONTRACTOR, CONNELL CONSTRUCTION COMPANY, INC., has entered into this Agreement under protest and that the said CONTRACTOR has instituted proceedings to test the legality of this Agreement; however, both parties will abide by the final decision of the highest court which rules on the legality of this Agreement.

This Agreement is cancellable by either party hereto upon Ten (10) days' written notice to the other.

UNION further agrees that it will not picket CONTRACTOR directly while this Agreement is in force and being complied with by CONTRACTOR.

LOCAL UNION 100 OF THE
UNITED ASSOCIATION OF
JOURNEYMEN AND
APPRENTICES OF THE
PLUMBING AND
PIPEFITTING INDUSTRY

(Signed) OSCAR D. SEASTRUNK
UNION
CONNELL CONSTRUCTION
COMPANY, INC.
(Signed) THOMAS H. STEWART
THOMAS H. STEWART,
President
CONTRACTOR

PLAINTIFF'S EXHIBIT No. 5

WRIGHT-RICH AND ASSOCIATES ARCHITECTS AND PLANNING CONSULTANTS

April 29, 1971

TO: General Contractors, First National Bank Tower, Garland, Texas

FROM: Wright-Rich and Associates, Architects

SUBJECT: Approved Sub-Contractors

The following is a list of approved sub-contractors which were selected from the submittals received:

I. Mechanical and Plumbing

1. Arcadia Plumbing Co. — 4825 Cole Ave
2. Avery Air Conditioning — 5607 E University Blvd
3. Allied Mechanical Contractors — 6106 Wycliff
4. Beard Plumbing Co.
5. Burden Brothers, Inc.
6. Beatty-Berger Eng. Co. — 9966 Monroe
7. Brandt Engineering, Inc. — 11345 Indian Trail
8. Caudle Engineering (Plumbing), Garland — P.O. Box 5386, 75222
9. Cohn-Daniel Corporation
10. C. Wallace Plumbing Co.
11. Dallas Air Conditioning, Inc. — 1708 Cedar Springs
12. Drew Woods, Inc. — 3201 LBJ Freeway
13. Ideal Plumbing — 2127 Irving
14. Kieffer Plumbing and Heating Co.
15. Lone Star Mechanical — Carlisle Inc., 11858 E NW Hwy
16. McBroome-Bennett Mech. Contrs., Garland — 430 Forest Hills Expy
17. Milton B. Levy & Son Plumbing Co. — 2538
18. Natkin and Co. — 2676 Brunner
19. Texas Distributors Inc., Box 20637

II. Electrical

1. Abright Electric Co. — 2410 Hall
2. Acklin Electric Co. — 3118 Farrington
3. Allied Electric Co. — 409 Forest Hills, Garland

2727 CEDAR SPRINGS DALLAS TEXAS 75201 TELEPHONE 214 748-0205

PLAINTIFF'S EXHIBIT No. 5A

AGREEMENT

Plumbers and Steamfitters Local Union No. 100
of the
United Association

AFL-CIO
DALLAS, TEXAS
and
Mechanical Contractors Asso. of Dallas, Tex.
ADOPTED
July 1, 1968 — July 1, 1971

• • • •

ARTICLE XIX
Working for Others

The Union further agrees that during the life of this Agreement that it will not grant or enter into any arrangement or understanding with other employer which provides for any wages less than stipulated in this Agreement as the minimum wages or for work under any more favorable term or conditions to the employer than are expressed or implied in this Agreement for less than the rate of wages indicated in this Agreement. Contractors agree not to employ any workmen subject to this Agreement for less than the rate of wages indicated in this Agreement, or under any more favorable terms and conditions than are expressed or implied in this Agreement.

Further, no workman covered by this Agreement shall bargain or contract to work for lump sum.

And further, the Union agrees that it will not furnish men to any employer not regularly engaged in the pipe trades industry as a Plumbing, Heating, Air Conditioning and/or Piping Contractor, including Rigging Contractors. This condition is not intended to cover members of the union whose regular employment is full time as maintenance men for any organization usually having such classification of employee on its payroll.

* * * *

PLAINTIFF'S EXHIBIT No. 6A

* * * *

Article XVII
Working for Others

The Union further agrees that during the life of this Agreement that it will not grant or enter into any arrangement or understanding with other employer which provides for any wages less than stipulated in this Agreement as the minimum wages for work under any more favorable term or conditions to the employer than are expressed or implied in this Agreement for less than the rate of wages indicated in this Agreement. Contractors agree not to employ any workmen subject to this Agreement for less than the rate of wages in-

dicated in this Agreement or under any more favorable terms and conditions than are expressed or implied in this Agreement.

Further, no workman covered by this Agreement shall bargain or contract to work for lump sum.

And, further, the Union agrees that it will not furnish men to any employer not regularly engaged in the pipe trades industry as a Plumbing, Heating, Air Conditioning and/or Piping Contractor, including Rigging Contractors. This condition is not intended to cover members of the union whose regular employment is full time as maintenance men for any organization usually having such classification of employee on its payroll.

* * * *

PLAINTIFF'S EXHIBIT No. 6-A

* * * *

Article XI

Arbitration

Any disputes which may arise and which cannot be settled by the authorized representatives designated by each of the parties to the dispute, shall, upon written request describing the dispute, be referred to the Joint-

Arbitration Board whose decision shall be final. The Joint Arbitration Board shall consist of three (3) members from Local Union No. 100 or Local Union No. 146 and three (3) members from the North Texas Contractors Association making a total of six (6) members.

The Joint Arbitration Board shall select its own Chairman and Secretary, and shall meet within twenty-four (24) hours after proper written notice from the President of either party.

The Joint Arbitration Board shall decide all matters coming before it by a majority vote. Four (4) members of the Board, two (2) from each of the parties hereto, shall have the right to cast the full vote of its membership, and such vote shall be counted as though all members were present and voting.

If the Joint Arbitration Board fails to agree or adjust any such matter, an umpire shall be selected by it. This umpire shall be a leading citizen of the community known for his civic-mindedness and calm judgment.

If the Joint Arbitration Board cannot agree upon an umpire, then both parties to this Agreement mutually agree to submit the dispute to the Industrial Relations Council for the Plumbing and Pipe Fitting Industry, sponsored by United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry, Mechanical Contractors Association of America, and National Association of Plumbing, Heating, and

Cooling Contractors, in accordance with the rules prescribed by the Council.

* * * *

Article XVIII

Qualifying Intent

It is not the intention of Contractor or the Union to violate any State or Federal law, and all language used in this Agreement where susceptible of more than one meaning shall be interpreted in a manner consistent with the law. If any clause, sentence, Section or Article of this Agreement shall be interpreted as being contrary to law such clause, sentence, Section or Article is automatically eliminated from this Agreement, and the remainder of the Agreement shall continue in full force and effect.

* * * *

Article XXIV

Labor Department Evidence

In an effort to assist Local 100 and Local 146 in the establishment of wage rates compatible with those contained in this Agreement, it is agreed that each Contractor signatory to this Agreement will provide to the Business Manager of Local 100 and Local 146 the following information on all work performed; the name of the project; approximate job cost; wage scale being

paid; type of work performed. This information will be provided on forms furnished by Local 100 and Local 146 and mailed to the Business Manager within a reasonable time after a contract is awarded. However, it will not be considered necessary on jobs amounting to less than $10,000.00.

Sub Contract Clause

For the sole purpose of maintaining the wages and working conditions herein provided on all work controlled by the employer party hereto, the parties hereto agree: that if the employer should sub-contract work within the scope of this agreement, such sub-contract shall require the sub-contractor to observe the minimum wage scale, classification practice and working conditions provided in this Agreement. When any part of the work included by the employer in his contract is the subject of controversy between two or more crafts he shall assign and/or perform the work in accordance with the rules of the National Joint Board for Settlement of Jurisdictional Disputes, Building and Construction Industry, or any Agency established by law to settle such dispute, such assignment or performance shall not be construed as a violation of this Agreement.

Local Union No. 100 and Local Union No. 14 agrees that if during the life of this Agreement it grants any employer any better terms or conditions than those set forth in this Agreement, such better terms and conditions shall be made available thereafter to all employers for the life of this Agreement.

• • • •

DEFENDANT'S EXHIBIT No. 1

AGREEMENT

This agreement entered into between _____ hereinafter referred to as the "Employer", and the INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, AFL-CIO, of St. Louis, Missouri, hereinafter referred to as the "Association".

1. This agreement becomes effective _____, and shall continue in effect until terminated by three months' written notice from either party to the other. Changes may be made at any time by mutual consent.

2. This agreement shall be effective in all places where work is being performed or is to be performed by the Employer — or by any person, firm or corporation owned or financially controlled by the Employer, and covers all work coming under the jurisdiction of the Association.

3. The Employer recognizes the Association as the sole and exclusive bargaining representative for all employees employed on all work coming under the jurisdiction of the Association.

4. The Employer agrees not to sublet any work under the jurisdiction of the Association or its local unions — to any person, firm or corporation not in contractual relationship with this Association or its Affiliated Local Unions.

5. All employees who are members of the International Association of Bridge, Structural and Ornamental Iron Workers on the effective date of this contract shall be required to remain members of the Association in good standing as a condition of employment during the term of this contract. All employees may be required to become and remain members of the Association in good standing as a condition of employment from and after the thirty-first day following the dates of their employment, or the effective date of this contract, whichever is later.

(This clause shall be effective only in those States permitting Union Security.)

6. The Employer agrees to abide by the General Working Rules of this Association and to pay the scale of wages, work the schedule of hours and conform to the conditions of employment in force and effect in the locality in which the Employer is performing or is to perform work, provided that such conditions are not in violation of the National Labor Relations Act.

7. The Employer agrees to employ Journeymen in any territory where work is being performed or is to be performed in accordance with the Referral Plan in force and effect in the jurisdiction of the Local Union where such work is being performed or is to be performed, a sample copy of which Referral Plan is annexed hereto marked "Appendix A" and made a part hereof.

8. Any violation or annulment of the General Working Rules of the Association, or the subletting of any work coming under the jurisdiction of the Association to any person, firm or corporation not in contractual relationship with this Association or its affiliated Local Unions — will be sufficient cause for the cancellation of this agreement after the facts have been determined by the International Office of the Association.

9. In case a dispute arises which involves a question of the scale of wages or the General Working Rules of the Association, the matter shall be referred to the General President of the International Association of Bridge, Structural and Ornamental Iron Workers and he or his representative shall meet with a representative of the Employer who shall take steps at once to ascertain the facts and render a decision thereon.

Where the dispute involves a scale of wages any decision rendered shall be retroactive to the date on which the dispute originated.

In case the representative of the Employer and the representative of the Association are unable to reach an agreement on the facts in the case they may select an agency mutually agreeable to them to hear and pass upon the case in dispute.

10. Any provision of this agreement which is in contravention of any national, state or local law or governmental regulation affecting all or part of the territorial limits covered by this agreement shall be suspended in operation within the territorial limits to which such

law or regulation is applicable for the period during which such law or regulation is in effect. Such suspension shall not affect the operation of such provisions in territories covered by the agreement to which the law or regulation is not applicable, nor shall it affect the operations of the remainder of the provisions of the agreement within the territorial limits to which such law or regulation is applicable.

SIGNED FOR THE UNION
INTERNATIONAL ASSOCIATION OF
BRIDGE, STRUCTURAL
AND ORNAMENTAL IRON
WORKERS

_____

General President

_____

General Secretary

_____

SIGNED FOR THE
EMPLOYER

_____

_____

_____

DEFENDANT'S EXHIBIT No. 2

Revised: 8-20-65 No. ____ _____

ARTICLES OF AGREEMENT

THIS AGREEMENT is entered into this ____ day of _____, 197__, by and between _____, hereinafter referred to as the Employer, Developer and/or Owner-Builder, and the Building and Construction Trades Councils of Los Angeles, Long Beach, Orange County, San Bernardino and Riverside Counties, Imperial County, Ventura County, Santa Barbara County, San Luis Obispo County, and Kern, Inyo and Mono Counties of California, hereinafter referred to as the Councils.

WHEREAS, both the Employer, Developer and/or Owner-Builder have authority and control over the contracting and subcontracting of all work within the jurisdiction of the Unions affiliated with the Councils and should, therefore, assume responsibility for the compliance by their Contractors and Sub-Contractors with the provisions of the appropriate Collective Bargaining Agreements, it is agreed by the parties as follows:

I

This Agreement shall apply to and cover all building and construction work performed by the Employer, Developer and/or Owner-Builder within the jurisdiction of any Union affiliated with the Councils and the

contracting or subcontracting of work to be done at the site of the construction, alteration, painting, repair or demolition of a building, structure or other work.

II

The Employer, Developer and/or Owner-Builder agrees that all work performed within the jurisdiction of any Union affiliated with the Councils shall be performed pursuant to an executed agreement with the appropriate Union having work and territorial jurisdiction and affiliated with the Council in the area in which the work is performed.

III

The Employer, Developer and/or Owner-Builder agrees to abide by all of the terms and conditions of the current agreements of the respective crafts employed, including wages, hours, working conditions, health and welfare benefits, pension benefits, and other benefits, and further including any amendments, modifications, extensions, changes, supplements and renewals of said agreements negotiated by the parties thereto.

IV

The Employer, Developer and/or Owner-Builder agrees that he shall contract or subcontract all jobsite work set forth in Article I above to a person, firm, partnership or corporation that is party to an executed, current Agreement with the appropriate Union having

work and territorial jurisdiction, affiliated with the Council in which area the work is performed.

V

The Employer, Developer and/or Owner-Builder agrees that in the event he contracts or subcontracts any jobsite work set forth in Article I above, there shall be contained in his contract with the subcontractor a provision that the subcontractor shall be responsible for the payment of all the wages and fringe benefits provided under the Agreement with the appropriate Union affiliated with the Council. In the event that any subcontractor fails to pay the wages or fringe benefits provided under the Agreement with the appropriate Union affiliated with the Council, the Employer, Developer and/or Owner-Builder shall become liable for the payment of such sums and such sums shall immediately become due and payable by the Employer, Developer and/or Owner-Builder provided, however, he shall be notified of any such nonpayment by registered letter by the appropriate Union no later than ninety (90) days after notice of and/or completion of the entire project.

VI

The provisions of the Agreement shall be binding upon the Employer, Developer and/or Owner-Builder and upon any firm, partnership, company or corporation in which the Employer, Developer and/or Owner-Builder or any of its owners, partners, officers or stockholders has a substantial ownership interest. In the

event of any change of ownership, or in the form of the Employer's, Developer's, and/or Owner-Builder's business organization, the terms and obligations herein contained shall continue in full force and effect as to such organization.

VII

It is mutually agreed that any provision in the agreements of the respective crafts covering or relating to the subjects of Strikes, Lockouts, Procedure for Settlement of Grievances and Disputes, the Selection and Functioning of Tribunals for Arbitration, and the Settlement of Jurisdictional Disputes shall not be in effect or binding upon the Employer, Developer and/or Owner-Builder and the Councils and the respective craft Unions, nor incorporated in these Articles of Agreement by reference or otherwise, except as herein provided.

VIII

In the event a jurisdictional dispute arises which is not resolved by the Unions themselves locally, the matter shall be determined in the manner and by the procedure established by the National Joint Board for the Settlement of Jurisdictional Disputes, or in the event the National Joint Board for the Settlement of Jurisdictional Disputes is abolished, the Procedure established by the Building and Construction Trades Department shall prevail.

IX

In the event that the Employer, Developer and/or Owner-Builder violates any provision of this Agreement with the exception of Article IV above, or fails to abide by the determination as provided in Article VIII or in the event that any contractor or subcontractor of the Employer, Developer and/or Owner-Builder fails to abide by the provisions of the appropriate agreement, with the exception of any subcontracting clause contained in the appropriate agreement of the subcontractor, it will not be a violation of this Agreement for the Councils to terminate this Agreement and it shall not be a violation of this Agreement for any employee to refuse to perform any work or enter upon the premises of such Employer, Developer and/or Owner-Builder, to the extent permitted by law, and Employees who refuse to perform any work or enter upon the premises under the circumstances shall not be subject to discharge or any other disciplinary action, to the extent permitted by law.

The Employer, Developer and/or Owner-Builder further agrees that on all of his jobs he, all of his contractors and subcontractors will abide by all local, State and Federal health, safety and sanitary regulations, and in the event that there are any conditions which may be or tend to be detrimental to the employees' health, safety, morals, or reputation, it is agreed that the employees shall not be required to work under such conditions. It is further agreed that no employee shall be required to cross any lawful primary picket line or enter any premises at which there is a lawful

primary picket line authorized or approved by the Councils, individually or collectively, or authorized by any Central Labor Body in the area covered by this Agreement. The Employer, Developer and/or Owner-Builder agrees that he will not assign or require any employee covered by this Agreement to perform any work or enter premises under any of the circumstances above described at which there is a lawful primary picket line.

During the time of any violation of any of the provisions of this Agreement by the Employer, Developer and/or Owner-Builder, contractor or subcontractor, whether created by their executed, current agreements or otherwise, the affiliated Unions shall be released and relieved of any obligation to furnish workmen to any of them.

X

If any of the provisions of this Agreement shall be held invalid by operation of law or by any tribunal of competent jurisdiction, the remainder of this Agreement shall not be affected thereby and shall remain in full force and effect.

XI

No Employer, Developer and/or Owner-Builder or representative of any Council or Craft is authorized in any manner to modify, amend or alter this Agreement in any respect without the approval of all of the Councils, parties to this Agreement.

XII

This Agreement shall become effective at the date hereof and shall remain in full force and effect for one (1) year from said date and from year to year thereafter, provided, however that either party may give sixty (60) days written notice prior to each anniversary date, to the other party of its desire to terminate this Agreement.

The Councils recommend that the Employer, Developer and/or Owner-Builder when starting the construction of a project in one of the above-named Counties, other than the one in which he has customarily employed workmen or engages subcontractors, contact should be made with the Secretary of the Building and Construction Trades Council having jurisdiction. For this purpose Council Secretaries in each area covered by this Agreement are listed.

LOS ANGELES
1626 Beverly Blvd., Los Angeles
J. A. Cinquemani

LONG BEACH
1231 Locust Ave., Long Beach
C. B. Gariss

IMPERIAL
P. O. Box 625, El Centro
Kenneth R. Johnson

RIVERSIDE-SAN BERNARDINO
1074 La Cadena Dr., Riverside
Edwin P. Westmoreland

ORANGE
1532 E. Chestnut St., Santa Ana
Thomas W. Mathew

VENTURA
2641 Loma Vista Rd., Ventura
Victor F. Rose

SANTA BARBARA
417 Chapala St., Santa Barbara
Bill Fillippini

SAN LUIS OBISPO
1530 Monterey Street, San Luis Obispo
Harold L. Boyle

KERN-INYO-MONO
214 Bernard St., Bakersfield
H. D. Lackey

BUILDING AND CONSTRUCTION
TRADES COUNCIL OF
LOS ANGELES

_____
(City or County)

_____
(Signature of Council Secretary)

SUBMITTED BY:

_____
Business Representative

_____
Craft and Local Number

EMPLOYER, DEVELOPER
and/or OWNER-BUILDER

_____
(Print exactly as listed in
State License Bk.)
By _____
(Written signature of qualified
official)
State Address _____
City _____ Zip _____
Telephone _____
Classification _____
State License Number _____

DEFENDANT'S EXHIBIT No. 8

Kas Construction Company
318 East Main Street
Richardson, Texas 75080

Gentlemen:

This Local is engaged in a continuing effort to improve and protect the wages and work opportunities of those it represents through lawful and legitimate means. In this connection the enclosed contract has been prepared and is tendered to you with the request that you execute and return it to this Local.

The contract was drafted to conform to the provisions of Section 8 (e) of the Labor-Management Relations Act. Should you have any doubt as to its legality, please advise us promptly.

We hope that you will see fit to execute the enclosed contract. In the event you decide not to become a party to this agreement we would appreciate your early advice. Should we have not heard from you by Monday, April 13, 1970, we will interpret your silence as a rejection. In the event you should refuse to sign the enclosed contract, it is our intention to employ the lawful means available to us to protest this refusal.

By this proposed contract we do not seek for you to terminate any existing contractual or business relationship, or do we seek to force or require your firm to recognize or bargain with this organization, and we do not seek to organize your employees. Our sole pur-

pose in proposing the enclosed contract and any efforts that may in the future be made to obtain such contract are those purposes made lawful by Congress in the enactment of Section 8 (e) of the Labor-Management Relations Act.

Be assured that all activities by this Local to secure and/or enforce this contract will be in strict compliance with state and federal law. Should you ever have information to the contrary, please advise the undersigned promptly, so that any necessary steps can be taken to insure that there are no violations of the law. We shall appreciate your consideration of this request.

Sincerely,

Alva B. Patterson
Business Agent
Plumbers & Steamfitters
Local Union No. 100

DEFENDANT'S EXHIBIT No. 9

AGREEMENT

This Agreement entered into this _____ day of _____, 1968, by and between the signatory contractor, hereinafter referred to as Contractor, and Local Union No. 100 of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry hereinafter referred to as Union,

WITNESSETH

WHEREAS, the contractor and the union are engaged in the construction industry, and

WHEREAS, the contractor and the union desire to make an agreement applying in the event of subcontracting in accordance with Section 8 (e) of the Labor-Management Relations Act;

WHEREAS, it is understood that by this agreement the contractor does not grant, nor does the union seek, recognition as the collective bargaining representative of any employees of the signatory contractor; and

WHEREAS, it is further understood that the sub-contracting limitation provided herein applies only to mechanical work which the contractor does not perform with his own employees but uniformly subcontracts to other firms;

THEREFORE, the contractor and the union mutually agree with respect to work falling within the scope of this agreement that is to be done at the site of construction, alteration, painting or repair of any building, structure, or other works, that if the contractor should contract or subcontract any of the aforesaid work falling within the normal trade jurisdiction of the union, said contractor shall contract or subcontract such work only to firms that are parties to an executed, current collective bargaining agreement with Local

Union 100 of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry.

_____

Union

_____

Contractor

_____

DEFENDANT'S EXHIBIT No. 10

NATIONAL LABOR RELATIONS BOARD
REGION 16
Room 8A24, Federal Office Building, 819 Taylor Street
Fort Worth, Texas 76102

May 21, 1970

Michael J. Kuper, Esquire
Schoolfield & Smith
1200 Republic Bank Building
Dallas, Texas 75225

Re: Plumbers & Steamfitters
Local Union No. 100 (K.A.S.
Construction Co.)
Case No. 16-CC-363

Dear Mr. Kuper:

The above-captioned case charging a violation under Section 8 of the National Labor Relations Act, as a-

mended, has been carefully investigated and considered.

As a result of the investigation, it appears that because there is insufficient evidence of violation, further proceedings are not warranted at this time. More particularly, the investigation disclosed that the union was picketing to obtain the subcontracting clause in question and was not violative of 8(b)(4)(A) nor was there sufficient evidence of a secondary objective to warrant issuance of complaint under Section 8(b)(4)(B) of the Act. I am, therefore, refusing to issue complaint in this matter.

Pursuant to the National Labor Relations Board Rules and Regulations, you may obtain a review of this action by filing an appeal with the General Counsel of the National Labor Relations Board, Washington, D.C., 20570, and a copy with me. This appeal must contain a complete statement setting forth facts and reasons upon which it is based. The appeal must be received by the General Counsel in Washington, D.C., by the close of business on *June 3, 1970*. Upon good cause shown, however, the General Counsel may grant special permission for a longer period within which to file. Any such request for a longer period of time must

be made prior to June 3, 1970. A copy of any such request for extension of time should be submitted to me.

Sincerely yours,

Elmer Davis
Regional Director

May 25, 1970

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DEFENDANT'S EXHIBIT No. 11

NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, D.C. 20570

Re: Plumbers & Steamfitters
Local Union No. 100 (K.A.S.
Construction Co.)
Case No. 16-CC-363

Michael Jay Kuper, Esq.
Schoolfield and Smith
1200 Republic National Bank Building
Dallas, Texas 75201

Dear Mr. Kuper:

Your appeal in the above matter has been duly considered.

The appeal is denied. Under all the circumstances, inasmuch as the contract clause sought by the Union was not unlawful on its face, the picketing for it would not, without more, violate the Act. *Northeastern Indiana Bldg. Constr. Trades, et al* (Centlivre Village Apts.), 148 NLRB 854; *Los Angeles Building and Construction Trades Council* (Church's Fried Chicken), 183 NLRB No. 102, slip opin., p. 11. There was no evidence that the Union had sought a cessation of business between K.A.S. and its plumbing subcontractor, and the picketing began four days before the plumbing subcontractor began on the job. *Local 437, IBEW* (Dimeo Construction Company), 180 NLRB No. 32, cited in the appeal, is inapposite in that the clause in that case was one prohibited by 8(e).

Very truly yours,

Arnold Ordman
General Counsel

(Signed) IRVING M. HERMAN
Irving M. Herman
Director, Office of Appeals

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1973

No. 73-1256

CONNELL CONSTRUCTION COMPANY, INC.,
Petitioner,

versus

PLUMBERS AND STEAMFITTERS LOCAL UNION NO. 100, etc.,
Respondent.

ORDER ALLOWING CERTIORARI
May 13, 1974

The Petition for a Writ of Certiorari is GRANTED.